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# Gaming Law

**Portugal**

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# PORTUGAL

## Law and Practice

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## Contents

<b>1. Introduction</b>	p.3	6.5 Recent or Forthcoming Changes	p.9
1.1 Current Outlook	p.3	6.6 Technical Measures	p.9
1.2 Recent Changes	p.3	<b>7. Responsible Gambling</b>	p.9
<b>2. Jurisdictional Overview</b>	p.3	7.1 RG Requirements	p.9
2.1 Online	p.3	7.2 Gambling Management Tools	p.9
2.2 Land-Based	p.3	<b>8. Anti-money Laundering</b>	p.9
<b>3. Legislative Framework</b>	p.5	8.1 AML Legislation	p.9
3.1 Key Legislation	p.5	8.2 AML Requirements	p.9
3.2 Definition of Gambling	p.5	<b>9. Advertising</b>	p.10
3.3 Definition of Land-Based Gambling	p.5	9.1 Regulatory/Supervisory Agency	p.10
3.4 Definition of Online Gambling	p.5	9.2 Definition of Advertising	p.10
3.5 Key Offences	p.5	9.3 Key Legal, Regulatory and Licensing Provisions	p.10
3.6 Penalties for Unlawful Gambling	p.5	9.4 Restrictions on Advertising	p.10
3.7 Pending Legislation	p.6	9.5 Sanctions/Penalties	p.10
<b>4. Licensing and Regulatory Framework</b>	p.6	<b>10. Acquisitions and Changes of Control</b>	p.10
4.1 Regulatory Authority	p.6	10.1 Disclosure Requirements	p.10
4.2 Regulatory Approach	p.6	10.2 Change of Corporate Control Triggers	p.10
4.3 Types of Licences	p.6	10.3 Passive Investor Requirements	p.11
4.4 Availability of Licences	p.6	<b>11. Enforcement</b>	p.11
4.5 Duration of Licences	p.6	11.1 Powers	p.11
4.6 Application Requirements	p.6	11.2 Sanctions	p.11
4.7 Application Timing	p.8	11.3 Financial Penalties	p.11
4.8 Application Fees	p.8	<b>12. Recent Trends</b>	p.11
4.9 Ongoing Annual Fees	p.8	12.1 Social Gaming	p.11
<b>5. Land-Based Gambling</b>	p.8	12.2 Esports	p.11
5.1 Premises Licensing	p.8	12.3 Fantasy Sports	p.11
5.2 Recent or Forthcoming Changes	p.8	12.4 Skill Gaming	p.11
<b>6. Online Gambling</b>	p.9	12.5 Blockchain	p.11
6.1 B2C Licences	p.9	12.6 Reform	p.11
6.2 B2B Licences (Suppliers, Software, Etc)	p.9	<b>13. Tax</b>	p.12
6.3 Affiliates	p.9	13.1 Tax Rate by Sector	p.12
6.4 White Labels	p.9		

## 1. Introduction

### 1.1 Current Outlook

The land-based gaming sector has been relatively stable in the past few years and land-based gaming operators are well established in the Portuguese market. The legal framework in place has been deemed adequate to safeguard the sector as no major innovations have been introduced.

In contrast, the online gambling sector has seen numerous legal developments due to the increasing number of different forms of online gambling that have been brought to the market. In addition, the legal framework has been amended to cope with the technological developments of the online gambling industry.

### 1.2 Recent Changes

#### Land-Based Gambling

Decree-Law No 422/89, December 2nd, as amended (the “Gambling Law”), applicable to land-based gambling operators, has been subject to minor amendments over the past few years and operating rules for casinos and bingo halls have not changed significantly in recent times.

#### Online Gambling

Before 29 April 2015, online gambling was not regulated. The legal framework for online gambling and betting (*Regime Jurídico dos Jogos e Apostas Online*) (the “Online Gambling Act”), provided by Decree-Law No 66/2015, April 29th, as amended, established a licensing system for the provision of online gambling services with the supervision of the Gaming Regulatory Body and the Gaming Commission (as defined in **4.1 Regulatory Authority**).

## 2. Jurisdictional Overview

### 2.1 Online

Online gambling is defined as follows: “games of chance, fixed-odds sports bets, totalisator/pari-mutuel or fixed-odds horse racing bets, in which the player resorts to any devices, equipment or systems that enable the production, storage and transmission of documents, data and information, and that are carried out remotely, through electronic means, computer, tele-matics, interactive media, or any other means”.

The Online Gambling Act sets out an exhaustive list of games of chance that can be offered on online gambling platforms, including:

- fixed-odds sports betting;
- totalisator/pari-mutuel and fixed-odds horse racing betting;
- bingo; and

- games of chance.

Operating new types of games of chance, which are not provided for under the Online Gambling Act, may be authorised by the competent authorities.

It should be noted that sports betting has been classified both as a land-based and an online game. Land-based sports betting is exclusively operated and regulated by *Santa Casa da Misericórdia de Lisboa* (SCML), a public entity funded by the Portuguese state that operates and monitors social state-run games. On the other hand, online sports betting is accessible to licensed operators and regulated by the Online Gambling Act.

Similarly, horse racing betting can be provided both as land-based and online services. Horse racing betting is defined under the Online Gambling Act, as follows: “Horse racing betting is where the sum of money placed as a bet is associated with a prediction as to a certain kind of result in a previously identified competition, the outcome of which is uncertain and not dependent on the will of the participants”.

Land-based horse racing betting (totalisator/pari-mutuel bet) is exclusively operated and regulated by SCML and online horse racing betting (fixed-odds bet and totalisator/pari-mutuel bet) is accessible to licensed operators and regulated by the Online Gambling Act. Online horse racing betting operators can offer betting on horse races organised in Portugal or abroad, provided that the races are listed on the official list approved by the Gaming Regulatory Body (as defined in **4.1 Regulatory Authority**).

### 2.2 Land-Based Overview

The Gambling Law provides for the possibility of games of chance (and gambling-related activities) being operated in several gaming establishments, including (i) land-based casinos; (ii) vessels, aircraft, off-site casinos and off-site arcade/amusement machines; and (iii) land-based bingo halls.

#### Land-Based Casinos

Casinos are establishments that operate games of chance, as well as complementary activities, in accordance with the terms and conditions provided for under the Gambling Law.

Casinos in Portugal operate under a concession regime and there are currently 12 land-based casinos that have entered into concession agreements:

- Casino de São Miguel;
- Casino de Vilamoura;
- Casino de Monte Gordo;
- Casino de Portimão;

- Casino de Espinho;
- Casino da Figueira da Foz;
- Casino do Estoril;
- Casino de Lisboa;
- Casino da Póvoa de Varzim;
- Casino de Tróia;
- Casino de Chaves; and
- Casino da Madeira.

The Gambling Law and ancillary legal instruments set out the games of chance that can be offered in casinos, including:

- baccarat punto banco;
- French banque;
- boule;
- cussec;
- écarté banco;
- French and American roulette;
- blackjack/21;
- chukluck;
- trente et quarante;
- limited bank baccarat;
- craps;
- keno;
- baccarat chemin de fer;
- open bank baccarat;
- écarté;
- bingo; and
- non-banking poker (including the variants Omaha, hold 'em and synthetic), tournament poker and Caribbean stud poker.

Operating new types of games of chance (which are not provided for under the Gambling Law) may be authorised, by the competent authorities, upon request of the operators.

## Vessels, Aircraft, Off-Site Casinos and Off-Site Arcade/Amusement Machines

The Gambling Law sets out that, in certain circumstances, the competent authorities may provide for the possibility to operate games of chance in vessels or aircraft, as well as to operate non-banking games of chance and arcade machines in other places of relevant touristic interest.

Operating games of chance inside these establishments is subject to prior authorisation of the competent authorities. With regard to the applicable legal requirements, the operators should consider those applicable to the operation of games of chance inside casino halls, which in turn are equally applicable to games of chance being carried out off-site.

Additionally, the Portuguese legal framework provides for the possibility to operate amusement machines, which are classified as any machines that offer games that are exclusively or fundamentally reliant on the player's expertise and (i) do not grant any prizes in cash, chips/tokens (*fichas*) or items with economic value but allow for the possibility to extend the duration of the game based on the player's score, or (ii) grant a prize with an economic value, which may not exceed three times the amount spent by the player.

## Land-Based Bingo Halls

Land-based bingo halls are exclusively allowed to operate and engage in bingo games, including traditional and electronic bingo, therefore are precluded from the possibility to operate and provide any type of game of chance other than bingo.

Bingo halls in Portugal operate under a concession regime and there are currently 14 entities that have entered into concession agreements:

- Associação Académica de Coimbra;
- Ginásio Clube do Sul;
- Casa Pia de Lisboa;
- Boavista Futebol Clube;
- Clube de Futebol "Os Belenenses";
- Sport Lisboa e Benfica;
- Clube de Futebol Estrela da Amadora;
- Saviotti, S.A. – Koala;
- Manuel Jesus Santo & Filhos, Lda.;
- Odivelas Futebol Clube – Futebol SAD;
- Sporting Clube Olhanense;
- Saviotti, S.A. – Panda;
- Vitória Futebol Clube; and
- Consórcio "Pauta das Flores – Salgueiros 08".

The Portuguese legal framework also provides for the possibility to operate and offer bingo games in casinos that have entered into concession agreements.

## Lotteries

Under Portuguese law, there are a number of state-run games (*jogos sociais do estado*) that are operated by SCML under an exclusive licence. SCML's exclusive licence provides for the right to operate, among others, national lotteries.

People situated outside of Portugal are permitted to play the lottery on the *Santa Casa da Misericórdia de Lisboa* website, but for that purpose they need to have a Portuguese bank account. People situated in Portugal are not allowed to access lotteries in other countries via online or other communication systems. However, this does not prevent Portuguese residents from par-

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participating in lotteries while in other countries (subject to such countries' lotteries rules).

## 3. Legislative Framework

### 3.1 Key Legislation

For private operators offering gambling services, the most important legal instruments are the following.

#### Land-Based Gambling

- The Gambling Law provides the legal framework for the operation of games of chance in casinos.
- Decree-Law No 31/2011, March 4th, as amended, provides the legal framework for the operation of bingo halls.
- Decree-Law No 310/2002, December 18th, as amended, provides the legal framework for the operation of amusement machines.
- In addition to the above-mentioned instruments, there are several regulations and instructions applicable to land-based gambling, which govern, among others, specific matters related to each type of game of chance.

#### Online Gambling

- The Online Gambling Act provides the legal framework for online gambling and betting.
- There are additional legal instruments – including regulations, instructions and guidance – that are applicable to online gambling, including instruments that set forth the technical requirements to operate an online gambling platform.

#### Other Relevant Instruments

- Law No 83/2017, August 18th, provides for anti-money laundering and anti-terrorism financing measures.
- Decree-Law No 330/90, October 23rd, as amended, approves the publicity code (the “Publicity Code”).

#### State-Run Games

The legal framework applicable to state-run games (*jogos sociais do estado*) includes:

- Decree-Law No 40 397, 24 November 1955, as amended, has approved the reorganisation of SCML and governs the national lottery (*lotaria nacional*);
- Decree-Law No 314/94, November 23rd, authorises SCML to operate the Portuguese instant lottery (*lotaria instantânea*);
- Decree-Law No 225/98, July 17th, as amended, governs the football pools (*totogolo*);
- Decree-Law No 210/2004, August 20th, as amended, governs the EuroMillions lottery in Portugal;

- Decree-Law No 67/2015, April 29th, as amended, approves the legal framework for land-based fixed-odds sports betting; and
- Decree-Law No 68/2015, April 29th, approves the legal framework for land-based horse racing betting (totalisator/pari-mutuel bet).

### 3.2 Definition of Gambling

Gambling is defined under the Gambling Law as “all games whose outcome is exclusively or fundamentally contingent on chance” and in the Online Gambling Act as “all games that involve a player committing an amount of cash, the outcome of which is exclusively or fundamentally contingent on chance”.

### 3.3 Definition of Land-Based Gambling

The Online Gambling Act sets forth the definition of land-based gambling: “gambling or betting carried out in casinos, bingo halls or other places previously authorised for such purpose and which require the physical presence of the player”.

### 3.4 Definition of Online Gambling

The Online Gambling Act sets forth the definition of online gambling: “games of chance, fixed-odds sports bets, totalisator/pari-mutuel or fixed-odds horse racing bets, in which the player resorts to any devices, equipment or systems that enable the production, storage and transmission of documents, data and information, and that are carried out remotely, through electronic means, computer, telematics, interactive media, or any other means”.

### 3.5 Key Offences

The Gambling Law sets out criminal and unlawful administrative offences for certain actions. The key offences include illegal operation of gambling activities, presence in illegal gambling sites, coercion to the practice of gambling, fraudulent gambling, usury for gambling and illegal commercialisation of gambling material.

Similarly, the Online Gambling Act sets out key offences, including illegal operation of online gambling and betting platforms, and fraud and disobedience to the regulatory entity.

### 3.6 Penalties for Unlawful Gambling

The Portuguese legal framework for gambling activities sets forth the penalties applicable to unlawful gambling, including criminal charges (including imprisonment), misdemeanours (simple, serious and very serious), fines and administrative sanctions, which will be applied depending on the unlawful action carried out, the degree of culpability and any mitigating circumstances, among others.

### 3.7 Pending Legislation

There is no pending legislation.

## 4. Licensing and Regulatory Framework

### 4.1 Regulatory Authority

The duty to control, monitor/supervise and regulate the operation and practice of gambling activities in Portugal is jointly carried out by:

- the Portuguese Gaming Commission, which co-ordinates and monitors the activity of the *Serviço de Regulação e Inspeção de Jogos*, having control, supervision and sanctioning powers; and
- the *Serviço de Regulação e Inspeção de Jogos* (the “Gaming Regulatory Body”), which has inspection powers and directly controls, regulates and inspects the activity of land-based and online gambling operators.

### 4.2 Regulatory Approach

The Portuguese regulatory framework has been constructed in a way that focuses mainly on a prescriptive approach.

Laws, regulations and regulatory entities mostly aim at determining objective “personal”, professional and technical requirements that are checked upon the attribution of licences (eg, acceptance criteria that operators need to comply with in order to lawfully carry out gambling activities in Portugal) but that are also followed up during the operation of the gaming business of the local operators.

This is particularly the case in online gambling activities as the licensing process has been constructed in a way that forces operators to demonstrate they effectively meet the applicable requirements when licensing and throughout the term of their licences.

### 4.3 Types of Licences

#### Land-Based Gambling – Concession Agreements

To operate a land-based casino or a bingo hall, operators must enter a public tender procedure to be granted a concession. There is no specific limit on the number of concessions that can be granted, but these are dependent on the public tenders effectively launched by the public authorities. It should be noted that concession agreements cover a specific geographic area.

#### Online Gambling – Licences

The Online Gambling Act has established a closed licensing system. In order to operate an online gambling platform in Portugal, operators must be duly licensed; ie, unlicensed platforms

or platforms licensed under foreign jurisdictions should not be accessible to anyone located within the Portuguese territory.

There are currently four types of online gambling licences provided for under the Online Gambling Act.

- Fixed-odds sports betting.
- Totalisator/pari-mutuel and fixed-odds horse racing betting.
- Bingo.
- Games of chance, including:
  - (a) baccarat punto banca/baccarat punto banca Macau;
  - (b) French banque;
  - (c) blackjack/21;
  - (d) slot machines;
  - (e) tournament poker;
  - (f) poker (Omaha, hold ‘em and synthetic);
  - (g) Caribbean stud poker; and
  - (h) American and French roulette.

### 4.4 Availability of Licences

As mentioned previously, to operate a land-based casino or bingo hall, operators must enter into a concession agreement, and these are dependent on the public tenders effectively launched by the public authorities. Entering into a concession agreement entails a considerable amount of time and paperwork to be handled by the prospective operator.

As regards online gambling, operators must be granted a licence that is subject to an extensive and bureaucratic process that needs to be taken care of by the applicant, which typically takes between six and eighteen months to be completed. This said, licences are not readily available and operators intending to operate in the Portuguese market must ensure they account for the licensing procedure.

### 4.5 Duration of Licences

#### Land-Based Gambling

The public tender documents will determine the duration of the concession agreements and the possibility of these being renewed.

#### Online Gambling

Online gambling licences are valid for three years and can be extended for equal periods of three years, provided the operator meets the legal requirements for extension.

### 4.6 Application Requirements

#### Concession Agreements for Land-Based Activities

To be eligible to participate in a public tender to be granted a casino concession, the following will be required:

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- the operator must have been incorporated as a public limited company (*sociedade anónima*), or any equivalent, in an EU member state or any other state that is a signatory to the European Economic Area (EEA) and that is bound to administrative co-operation in the fields of tax, combating fraud and anti-money laundering;
- companies not incorporated under Portuguese law must have a branch in Portugal;
- proof of solvency – ie, entities that have been granted a concession – must comply with the minimum equity/net assets ratio provided for under the Gambling Law; and
- 60% of the share capital must be represented by shares that allow the issuer to identify, at any time, the respective holders.

The application procedure takes the form of a public tender promoted by the government. Each tender has a specific time limit as there is no general time limit imposed by law. Therefore, the government has a great margin of discretion in structuring a public tender and a great amount of time to assess each application.

The decision to enter into any contract, approve the tender proceedings, identify the required qualifications of the applicants, grant the concession and approve the initial drafts of the concession agreements, as well as its subsequent execution, are under the responsibility of the member of the government in charge of the tourism sector.

Tender documents should set forth, among others:

- the duration of the concession agreement and the possibility of it being renewed;
- the criteria to evaluate the applicants; and
- the location of the casino.

To operate a land-based bingo hall, operators must enter into a public tender procedure to be granted a concession, with the application procedure substantially similar to the one provided for land-based casinos.

## Online Gambling Platforms

There are currently four types of online gambling licences provided for under the Online Gambling Act.

- Fixed-odds sports betting.
- Totalisator/pari-mutuel and fixed-odds horse racing betting.
- Bingo.
- Games of chance, including:
  - (a) baccarat punto banca/baccarat punto banca Macau;
  - (b) French banque;
  - (c) blackjack/21;

- (d) slot machines;
- (e) tournament poker;
- (f) poker (Omaha, hold 'em and synthetic);
- (g) Caribbean stud poker; and
- (h) American and French roulette.

- To be eligible to be granted an online gambling licence, the following conditions must be met.
- The operator must have been incorporated as a public limited company, or any equivalent, under an EU member state or any other state that is a signatory to the EEA and that is bound to administrative co-operation in the fields of tax, combating fraud and anti-money laundering.
- Companies not incorporated under Portuguese law must have a branch in Portugal.
- The operator must have its tax and social security affairs in order in Portugal or in the state in which its main establishment is located.
- The operator must be of good standing (*idoneidade*) and have technical, economic and financial capacity, as provided for under the Online Gambling Act. These requirements are particularly strict and demanding, and therefore burdensome, to meet.
- Economic and financial capacity – the equity/net assets ratio should be equal to or greater than 35%.
- The operator must prepare and submit a structuring plan for the gambling technical system.
- The corporate purpose of the operator must determine that the entity provides gambling services.

The licence application must be submitted on the standard form approved by the Gaming Regulatory Body and it must be duly accompanied by the required documents. These documents should demonstrate that the prospective operator complies with eligibility requirements.

The issue of the licence to operate an online gambling platform is subject to:

- certification, homologation and official approval of the gambling technical system;
- payment of any penalties applied under the Online Gambling Act;
- payment of any fees applicable to the submission of the licence request/homologation of the technical system; and
- payment of the applicable deposits to the Gaming Regulatory Body.

Finally, there are several requirements applicable to legal representatives of the operators, who must demonstrate they comply with the applicable law, notably to demonstrate they are in good standing to carry out their duties; eg, any criminal convictions



should prevent the legal representatives from carrying out their activities as legal representatives of the operator.

## 4.7 Application Timing

### Land-Based Gambling

Timing is dependent on the public tenders effectively launched by the public authorities. As mentioned, each tender has a specific time limit as there is no general time limit imposed by law. Therefore, the government has a great margin of discretion in structuring a public tender and a great amount of time to assess each application.

### Online Gambling

Once the application has been submitted, the procedure typically takes between six and eighteen months to be completed. The Portuguese competent authorities have been receiving a greater number of application requests to operate online platforms, which may ultimately delay the licensing process. In any case, timings will mainly depend on the responsiveness of the operators to the authorities' clarification requests.

## 4.8 Application Fees

### Land-Based Gambling

Application fees are defined on a case-by-case basis on each public tender or concession agreement.

### Online Gambling

Before issuing the licence, the Gaming Regulatory Body will assess and homologate the operator's gambling technical system. Such homologation process is subject to payment of the following fees:

- initial homologation – EUR18,000 (plus EUR2,000 for the operation of each betting category, each type of game of chance and each new type of game of chance authorised under the Online Gambling Act);
- homologation for the purposes of the issuance of a new licence – EUR2,000 for the operation of each betting category, each type of game of chance and each new type of game of chance authorised under the Online Gambling Act;
- homologation for the purposes of operating games of chance not included in the original licence – EUR2,000 to operate each type of game of chance; and
- homologation for the purposes of operating new types of games of chance authorised under Article 12(2) to (4) of the Online Gambling Act – EUR2,000 to operate each new type of game of chance.

Once the initial homologation phase has been successfully concluded, the Gaming Regulatory Body will issue the licence(s) against the payment of the following fees:

- fixed-odds sports betting – EUR12,000;
- totalisator/pari-mutuel and fixed-odds horse racing betting – EUR12,000;
- bingo – EUR2,000;
- baccarat punto banca/baccarat punto banca Macau; French banque; blackjack/21; slot machines; tournament poker; poker in the form of Omaha, hold 'em and synthetic; American and French roulette – EUR12,000 plus EUR2,000 to operate each new type of game of chance authorised under the Online Gambling Act; and
- authorisation to operate new games of chance under Article 12(2) to (4) of the Online Gambling Act – EUR2,000 for each new type of game of chance, reduced according to the proportion remaining of the duration of the licence.

If the application request is accepted, the applicant must also provide the Gaming Regulatory Body with two deposits (for each licence granted by the Gaming Regulatory Body):

- as guarantee of its legal obligations – EUR500,000; and
- as guarantee of the payment of the online gambling special tax – EUR100,000.

## 4.9 Ongoing Annual Fees

Ongoing annual fees might be imposed on land-based gambling operators on a case-by case-basis.

# 5. Land-Based Gambling

## 5.1 Premises Licensing

As a general requirement, land-based casino premises must meet standards of functionality and comfort equivalent to a high-class tourism establishment and the specific requirements should be provided under the tender documents. It must be noted that any construction works carried out for any reason other than conservation purposes will be subject to approval by competent authorities (notably, *Inspecção Geral de Jogos* and *Comissão de Apreciação de Projetos e Obras*).

Land-based casino premises are otherwise subject to construction and operation requirements and licences that are applicable to any other premises that is open to the general public.

## 5.2 Recent or Forthcoming Changes

The land-based gambling legal framework has not changed significantly in recent times, including in relation to the licensing system and operation rules, and it is not expected to change in the near future.



## 6. Online Gambling

### 6.1 B2C Licences

The licences provided for under the Online Gambling Act are exclusively granted to B2C operators that comply with application requirements mentioned in **4.6 Application Requirements**. These operators contract directly with the clients through their online gambling platform, which must have been duly licensed and certified by the competent authorities. This said, the online gambling licences issued in Portugal are related to B2C operators.

### 6.2 B2B Licences (Suppliers, Software, Etc)

The Portuguese legal framework does not provide for the possibility of B2B operators being granted a licence to operate in Portugal. Typically, B2C operators subcontract online providers of gambling services, but the licence itself is granted to B2C operators and the competent authorities will ensure the latter comply with all technical requirements.

### 6.3 Affiliates

There are no specific requirements/measures to regulate the use of affiliates.

### 6.4 White Labels

The licences are granted to specific operators that must comply with all legal and technical requirements. Licensing and regulatory requirements apply and directly to operators, not to their providers (white-label or otherwise).

### 6.5 Recent or Forthcoming Changes

The tax regime for online gambling has been recently amended. Please refer to **13.1 Tax Rate by Sector**.

### 6.6 Technical Measures

Whenever the Gaming Regulatory Body detects a website that provides online gambling and betting operated by an entity that is not duly licensed to operate in Portugal, it notifies the entity to cease from the activity and close the online gambling and betting website within a maximum period of 48 hours. Failure to comply with these instructions will result in the issuance, by the Gaming Regulatory Body, of an order to ISPs to block access to such illegal website, without prejudice to pursuing criminal charges against the website's operator.

## 7. Responsible Gambling

### 7.1 RG Requirements

The integrity, reliability and security of gambling and betting operations must be guaranteed at all times. Operators and competent authorities must raise awareness of the complexity of

these gambling activities, notably by drafting codes of conduct and disseminating good practices.

Before commencing activity, operators shall set up a plan and adopt measures to ensure responsible gambling and provide the players with information to foster moderate, non-compulsive and responsible attitudes.

### 7.2 Gambling Management Tools

The online gambling technical systems must provide for the possibility of players limiting their gambling activity, including:

- mechanisms that allow for the possibility to limit the amounts deposited in the player's account; and
- mechanisms that allow for the possibility to limit betting amounts placed on online gambling platforms.

In addition, the Online Gambling Act sets forth that online gambling platforms should implement mechanisms that provide for the possibility of players excluding themselves from online gambling. The self-exclusion period shall have a minimum duration of three months and shall continue until the date stipulated by the player or, in the absence of such stipulation, for an undetermined period of time.

Without prejudice to the minimum period of three months referred to above, the player might terminate the self-exclusion period, in which case the termination will take effect within the period of one month counted from such decision.

Similarly, the Gambling Law provides for the possibility of players requesting to be prohibited from entering gambling halls for a period that should not exceed five years.

## 8. Anti-money Laundering

### 8.1 AML Legislation

The Fourth Anti-Money Laundering Directive (Directive (EU) 2015/849, May 20th, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing), which subjects all operators to anti-money laundering rules, is transposed into Portuguese law by Law No 83/2017, August 18th.

### 8.2 AML Requirements

All operators are subject to specific obligations that aim to prevent money laundering and terrorist financing, including the following:

- to apply customer due diligence measures;
- to maintain appropriate records; and

- to report any indications of money laundering to the competent authorities.

## 9. Advertising

### 9.1 Regulatory/Supervisory Agency

The *Direção-Geral do Consumidor* is the entity responsible for supervising publicity in Portugal, with the Publicity Code (as defined previously) the main legal source in this field.

### 9.2 Definition of Advertising

Advertising is defined as “any form of communication made by entities of a public or private nature, in the course of a commercial, industrial, craft or liberal activity, with the direct or indirect purpose of:

- a) Promoting, with a view to its commercialisation or sale, any goods or services;
- b) Promoting ideas, principles, initiatives or institutions”.

It is also considered advertising “any form of communication by the Public Administration... whose direct or indirect objective is to promote the supply of goods or services”.

### 9.3 Key Legal, Regulatory and Licensing Provisions

The Publicity Code states that the advertising of gambling and betting must:

- be conducted in a socially responsible manner;
- respect the protection of minors, as well as other vulnerable risk groups;
- highlight the entertainment aspect of gambling and betting, and not demean non-players;
- not appeal to aspects relating to obtaining easy winnings;
- not suggest success, social achievement or special skills as a result of gambling; and
- not encourage excessive gambling or betting practices.

The Gaming Regulatory Body has recently issued a handbook of good practices to advertise gaming products and services, which is intended to complement the Publicity Code. Among others, the handbook states that TV and radio advertising campaigns related to gambling should not take place between 7am and 10.30pm.

### 9.4 Restrictions on Advertising

The main prohibitions include:

- gambling advertising that is aimed at, or features, minors in the message;
- gambling advertising within 250 metres in a straight line from schools or other buildings intended to be visited by minors;
- gambling advertising in events intended for minors or events in which minors are taking part as main participants; and
- operators must not be associated with any advertising materials that make reference to concession of loans.

The Online Gambling Act sets forth that it is illegal to promote unlicensed online gambling platforms.

### 9.5 Sanctions/Penalties

Penalties for infringing advertising regulations vary from pecuniary sanctions to seizure of objects used in the commission of administrative offences, temporary bans, temporary closure of the premises or establishments where the advertising activity takes place, as well as the cancellation of licences or permits.

## 10. Acquisitions and Changes of Control

### 10.1 Disclosure Requirements

At least 60% of the share capital of the operator must be represented by shares that allow the issuer to identify, at any time, the holder of such shares. The entity that has entered into a concession agreement or been granted a licence must notify the Gaming Regulatory Body of any acts or contracts that result in the acquisition, transfer or encumbrance of such shares.

### 10.2 Change of Corporate Control Triggers Land-Based Concession Agreements

The acquisition of shares representing more than 10% of the share capital of the concessionaire or any other transfer of shares that, directly or indirectly, results in the change of control of such company is subject to the prior consent of the member of the government in charge of the tourism sector. Additionally, tender proceedings can provide for specific limitations on the transfer of shares.

### Online Gambling

Licences can only be transferred/assigned with the prior authorisation of the Gaming Regulatory Body. For this purpose, a licence transfer/assignment shall be deemed to have occurred in the event of restructuring of the company that results in the transfer of the licence to another entity by means of a merger, split, entry of assets, among others, as well as in the case of transfer, in any legal form, of a direct or indirect stake in the share capital of the operator whereby the acquirer will hold the majority of the share capital of the operator or hold the majority

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of the votes or the possibility to appoint more than half of the members of the board of directors.

## 10.3 Passive Investor Requirements

There are no specific requirements for passive investors in acquisitions or changes of control, other than those that would result from a transaction triggering competition rules.

## 11. Enforcement

### 11.1 Powers

In addition to the criminal, civil and administrative procedures that may be initiated against operators, the regulatory bodies have the powers to cancel or suspend licences granted to online gambling operators as well as to terminate or suspend concession agreements.

During the past couple of years, the Gaming Regulatory Body has been increasingly active in the field of identifying and monitoring unlicensed online gambling platforms. According to the reports issued by the Gaming Regulatory Body, since the entry into force of the Online Gambling Act in 2015, such regulatory body has (i) issued 539 notifications for certain websites to cease their activity in Portugal, (ii) issued 447 ISP blocking notifications, and (iii) required the public prosecutor office (*ministério público*) to initiate 14 criminal proceedings.

### 11.2 Sanctions

Sanctions resulting from unlawful gambling activities are fully enforceable before national courts, provided the competent authorities have carried out the relevant proceeding in accordance with the applicable laws.

### 11.3 Financial Penalties

Under the Online Gambling Act, operators are required to provide a security deposit of EUR500,000, as guarantee of their legal obligations, including the payment of financial penalties. The Gambling Law sets forth that financial penalties are enforced by tax courts, within the basis of the instructions given by *Inspecção-Geral de Jogos*.

## 12. Recent Trends

### 12.1 Social Gaming

Social gaming is currently not specifically regulated in Portugal.

### 12.2 Esports

Currently, esports is not specifically regulated in Portugal. Even though Portugal is seeing rapid growth of esports, the future of this area (and potential regulation) is still very unpredictable.

There are a number of reputed organisations that have been organising esports events, which shows that the Portuguese market is aware of the opportunities that may arise from this emerging sector.

### 12.3 Fantasy Sports

Fantasy sports is currently not specifically regulated in Portugal.

### 12.4 Skill Gaming

Skill gaming is currently not specifically regulated in Portugal. However, the provision of any games whose results depend exclusively or fundamentally on the player's skill that award prizes in money, chips or any other means with economic value is not allowed under Portuguese law. This does not apply to knowledge-based and artistic development contests, as well as esports.

If no prizes in money or with economic value are awarded, then operators should be able to freely provide online skill-based games/social games without needing a licence, provided that such games do not use themes similar to the games subject to regulation (eg, slot machines, casino games, games of cards such as poker, and bingo).

### 12.5 Blockchain

Blockchain-related gambling is not yet regulated in Portugal.

### 12.6 Reform

#### Land-Based Gambling

No developments or legislative amendments are expected in land-based gambling.

#### Online Gambling

The Online Gambling Act received constant and heavy criticism within the gambling community during its implementation procedure, with the special gambling tax as the main subject of criticism.

Within this context, the online gambling tax regime has been recently amended and the 2020 Portuguese State Budget mentioned that such tax regime shall be reassessed within a maximum period of two years.

Further to that, the Gaming Regulatory Body has issued a report (which has not been publicly disclosed) that includes several suggestions for improvement of the online gambling legal framework.

At this stage, the authors do not anticipate any upcoming change or developments to the Portuguese online gambling and betting legal framework. The market is relatively stable and an increasing number of operators are being granted a licence and a sig-

nificant number of prospective operators are analysing and considering the Portuguese online gambling and betting market.

## 13. Tax

### 13.1 Tax Rate by Sector

#### Land-Based Gambling

Land-based casino games are subject to a special gambling tax (IEJ), which varies according to the geographic area where casinos are located.

Land-based bingo in bingo halls is subject to stamp duty of 25%.

#### Online Gambling

Online gambling is subject to a special online gambling tax (IEJO). There is a distinction between the following:

- games of chance and pari-mutuel betting on horse races – these are taxed at a fixed rate of 25% over the gross revenues of the operator; and
- fixed-odds sports betting and fixed-odds horse racing betting – these are taxed at a fixed rate of 8% over the amount of the bets made.

Additionally, in such cases where the fees charged by the operators of fixed-odds sports betting and fixed-odds horse racing betting where players compete against each other are the operator's only source of direct revenue, a fixed rate of 35% is levied on those fees.

With the exception of the above-mentioned taxes, gambling operators and players are not subject to corporate income tax, personal income tax or stamp duty on matters related to online gambling.

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 EUR5,000.

# PORTUGAL LAW AND PRACTICE

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**Morais Leitão, Galvão Teles, Soares da Silva & Associados SP RL** has a gaming law practice that is in a unique position to advise gaming sector clients throughout the Portuguese-speaking world through leading offices in Portugal, Angola and Mozambique. The multidisciplinary team of experts draws its experience from representing a wide range of industry players operating in a global marketplace. This international perspective allows the firm to bring to its clients specialised knowledge and local market insights in both matured and emerging markets.

Relevant Morais Leitão experience includes various matters related to European social gaming operators (public tenders, legal opinions, advertising, etc), adapting clients' strategies to national and European regulations, corporate and compliance assistance to online betting operators, partnerships between media companies and gambling software development companies, licensing matters and agreements with leading companies in bingo technology, and the development of online gambling platforms.

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