

PORTUGAL

João Alfredo Afonso,

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS



LEGISLATIVE FRAMEWORK OF GAMBLING REGULATION

OVERVIEW

1. WHAT LEGISLATION APPLIES TO GAMBLING?

Land-based gambling

The regulatory regime for state-operated gambling is as follows:

- The National Lottery is governed by Decree-Law No. 40 397, 24 November 1955, as amended by Decree-Law No. 200/2009, 27 August.
- *Joker* was approved by Decree-Law No. 412/93, 21 December, as amended by Decree-Law No. 200/2009, 27 August.
- Scratch cards were approved by Decree-Law No. 314/94, 23 December.
- Football pools (*Totogolo*) are governed by Decree-Law No. 225/98, 17 July.
- The EuroMillions lottery is governed by Decree-Law No. 210/2004, 20 August, as amended by Decree-Law No. 44/2011, 24 March.

Casinos are governed by the following legislation:

- Gambling Law (Decree-Law No. 422/89, 2 December, as amended by Decree-Law No. 114/2011, 30 November), which approves the legal framework for the operation of games of chance in casinos.
- Ordinance No. 1159/90, 27 November, which approves the rules for the distribution of tips to casino employees.
- Ordinance No. 217/2007, 26 February (as amended by Ordinance No. 401/2015, 9 November), which approves the execution rules for:
 - American roulette;
 - French roulette;
 - Portuguese dice;
 - craps;
 - cussec;
 - blackjack;
 - Caribbean stud poker;
 - baccarat;
 - Omaha poker;

- Hold'em poker;
 - “*póquer sintético*”;
 - tournament poker; and
 - slot machines.
- Law No. 8/2006, 15 March, establishes the conditions for the admission and hiring of croupiers.

Bingo is governed by the following legislation:

- Decree-Law No. 31/2011, 4 March (as amended by Decree-Law No. 65/2015 of 29 April), which approves the legal framework for the operation and functioning of bingo in bingo halls.
- Ordinance No. 128/2011, 1 April, which regulates the legal framework for the operation and functioning of bingo in bingo halls.

Decree-Law No. 310/2002, 18 December approves the legal framework for amusement/arcade machines operators.

Fixed-odds sports betting is governed by Decree-Law No. 67/2015, 29 April, while Decree-Law No. 68/2015, 29 April governs mutual horserace betting.

Online gambling

The legal framework for online betting and gambling (*Regime Jurídico do Jogo Online*) (RJO) is provided by Decree-Law No. 66/2015, 29 April.

Other relevant laws

Other application legislation includes:

- Law No. 25/2008, 5 June against terrorism financing and money laundering.
- Decree-Law No. 330/90, 23 October, in its updated version, which approves the Publicity Code.

DEFINITIONS OF GAMBLING

2. WHAT IS THE LEGAL DEFINITION OF GAMBLING IN YOUR JURISDICTION AND WHAT FALLS WITHIN THIS DEFINITION?

General definition

Games of chance are defined as “games whose result is exclusively or fundamentally contingent on luck” (*Decree-Law No. 422/89, 2 December*).

Online gambling

Online gambling is defined as “the operation and practice of games of chance, fixed-odds sports bets and horse racing betting, totalisator betting and fixed-odds betting when carried out remotely, through electronic, computer, telematics and interactive media, or by any other means” (*Decree-Law No. 66/2015, 29 April*).

Land-based gambling

Land-based gambling is defined as “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” (*Decree-Law No. 66/2015*).

REGULATORY AUTHORITIES

3. WHAT ARE THE REGULATORY OR GOVERNMENTAL BODIES THAT ARE RESPONSIBLE FOR SUPERVISING GAMBLING?

The following regulatory authorities are responsible for supervising gambling:

- **Serviço de Regulação e Inspeção de Jogos (SRIJ)**. SRIJ is the competent authority for monitoring, inspecting and regulating land-based games of chance and online gambling.
- **Santa Casa da Misericórdia de Lisboa (SCML)**. SCML is a public entity funded by the Portuguese state and is responsible for the monitoring and inspection of national lotteries, land-based fixed-odd sports betting and land-based mutual horserace betting.

GAMBLING PRODUCTS

4. WHAT GAMBLING PRODUCTS HAVE BEEN SPECIFICALLY IDENTIFIED BY LEGISLATION, AND WHAT DIFFERENT REQUIREMENTS HAVE BEEN ESTABLISHED FOR EACH?

Poker

Poker is classified as a game of chance and there are currently five types of poker accepted by legislation:

- Caribbean stud poker.
- Omaha poker.
- Hold'em poker.
- “Póquer Sintético”.
- Tournament poker.

Betting

There are no other betting products identified by Portuguese legislation other than the sports betting.

Sports betting

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*, while online sports betting is accessible to all operators and regulated by the RJO and supervised by SRIJ.

Casino games

Casino games are classified as games of chance. Gambling legislation has a catalogue of what types of games are considered casino games:

- Baccarat punto banca.
- French banque (“Portuguese dices”).
- Blackjack/21.
- Tournament poker in tournament mode.
- Non-banking poker (including the variants “omaha”, “hold'em” and “synthetic poker”).
- Caribbean stud poker.
- American roulette.
- French roulette.

Slot and other machine gaming

Slot machines are considered as any machine comprising three or more rotating reels, with symbols or other graphic representations, which gradually come to a stop on the line or lines of play, with the goal of forming combinations of symbols. Slot machines can only be operated in casinos.

Regarding other gaming machines, they can be operated in gaming rooms, subject to the licensing and compliance requirements laid down in gambling law.

Terminal-based gaming

See above, *Slot and other machine gaming*.

Bingo

Bingo is considered a game of chance and can be both land-based or online. Land-based bingo can only be operated in licensed bingo halls, according with relevant legislation applicable to bingo halls.

Online bingo is accessible to all operators and regulated by the RJO and supervised by SRIJ.

Lottery

Lottery is identified as a land-based social game and exclusively operated and supervised by *Santa Casa da Misericórdia de Lisboa*.

LAND-BASED GAMBLING

REGULATION/LICENSING

5. WHAT IS THE LICENSING REGIME (IF ANY) FOR LAND-BASED GAMBLING?

Available licences

For casinos and bingo halls, land-based gambling operators must enter a public tender procedure to be awarded a licence. More than one licence can be awarded, but the licence only covers a specific geographic area.

Eligibility

To be eligible for a land-based gambling licence, the operators must be:

- A limited liability company with a registered office in an EU member state or in a state signatory to the EEA.
- Bound to administrative co-operation in the fields of tax, combating fraud and money laundering.

Companies not incorporated in Portugal must also have a branch in Portugal to apply for a licence.

Application procedure

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 the 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.

Duration of licence and cost

The duration of licences for land-based concessions vary from ten to 20 years, depending on whether the applicant intends to operate a casino or a bingo hall. The duration of the licence can be extended at the government's discretion or through a request of the operator.

Licence costs are defined on a case-by-case basis on each public tender or concession. Generally, operators must pay a "contribution" to the Portuguese state based on their gross revenue. Additionally, operators may also have to assume some specific costs in subsidising public activities or construction of the municipalities where they are located.

6. WHAT ARE THE LIMITATIONS OR REQUIREMENTS IMPOSED ON LAND-BASED GAMBLING OPERATORS?

Prohibitions

Land-based casinos and bingo halls must comply with the following restrictions and prohibitions:

- A minimum age for entrance and playing of 18 years old.

- Limitation and prohibition for entrance and playing of persons representing certain public and state bodies, such as:
 - members of the sovereign bodies (that is, judges, members of the national parliament or the government);
 - public prosecutors; or
 - police authorities.
- Limitation and prohibition on employees of casinos to participate in the games.
- Legally incapacitated persons, persons condemned for fraudulent bankruptcy.
- Limitations on the betting amounts, depending on the type of game.

Restrictions

Land-based operators may only operate games of chance inside the casino area and within the designated geographic area. In bingo halls, only traditional and electronic bingo can be operated. Land-based operators must also:

- Adopt activities to raise awareness of gambling addiction.
- Foster social responsibility.
- Draft codes of conduct and good practices.

Anti-money laundering legislation

Land-based gambling operators are subject to several duties aiming to prevent money laundering and terrorist financing, including the obligation to:

- Apply customer due diligence measures (such as identifying the customer, the beneficial owner and the purpose and intended nature of the business relationship).
- Maintain appropriate records.
- Report any indications of money laundering to competent authorities, among others.

ONLINE GAMBLING

REGULATION/LICENSING

7. WHAT IS THE LICENSING REGIME (IF ANY) FOR ONLINE GAMBLING?

Available licences

There are four types of online gambling licences:

- Fixed-odds sports betting.
- Mutual and fixed-odds horserace betting.
- Bingo.
- Games of chance, including:
 - baccarat;
 - Portuguese dice;

- blackjack;
- slot machines;
- Tournament poker;
- Poker (such as, “Omaha”, “hold'em”, “synthetic” and Caribbean stud poker); and
- American and French roulette.

Eligibility

The eligibility requirements are the same as land-based gambling (*see Question 5, Eligibility*).

Application procedure

As the law was only approved in 2015, there is no precedent for the length of the licensing procedure. At the time of this publication, only two online gambling operators are licensed.

Duration of licence and cost

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

The homologation of the gambling system is subject to the following costs:

- Initial homologation: EUR18,000 (plus EUR2,000 for the operation of each type of bet, each type of game of chance and of each new type of games of chance authorised under Article 12(2) to (4) of the RJO).
- Homologation for the purposes of the issuance of a new licence: EUR2,000 for the operation of each type of bet, each type of game of chance and of each new type of games of chance authorised under Article 12(2) to (4) of the RJO.
- Homologation for the purposes of the operation of games of chance not included in the original licence: EUR2,000 for the operation of each type of game of chance.
- Homologation for the purposes of the operation of new types of games of chance authorised under Article 12(2) to (4) of the RJO: EUR2,000 for the operation of each new type of games of chance.

The cost of issuing or extending licences is as follows:

- Fixed-odds sports betting: EUR12,000.
- Pari-mutual and fixed-odds horse betting: EUR12,000.
- Bingo: EUR2,000.
- Baccarat, French bank, blackjack, slot machines, poker, American and French roulette: EUR12,000 plus EUR2,000 for the operation of each new type of games of chance authorised under Article 12(2) to (4) of the RJO.
- Authorisation for the operation of new games of chance under Article 12(2) to (4) of the RJO: EUR2,000 for each new type of games of chance, reduced according to the proportion of the licence's remaining duration.

If the request receives a favourable decision the applicant must also provide, within 30 days from the decision's notification, two deposits to SRIJ:

- A guarantee of its legal obligations: EUR500,000.
- A guarantee of the payment of the online gambling special tax: EUR 100,000.

8. WHAT ARE THE LIMITATIONS OR REQUIREMENTS IMPOSED ON ONLINE GAMBLING OPERATORS?

Prohibitions

Engaging in online gambling and betting, whether directly or through another, is prohibited for:

- Members of the sovereign bodies and the representatives of the Republic for the Autonomous Regions.
- Members of the government bodies of the Autonomous Regions.
- Public prosecutors, police authorities, security forces and their agents.
- Minors and persons declared as unfit under the civil law.
- Anyone who is banned from gambling (either voluntarily or under a court decision).
- Members of the company bodies of the gambling operators, in relation to their website.
- Anyone who has or may have access to the IT systems of the online gambling and betting of a given website.
- Any person involved in competitions, sports events and horse races, on which bets may be placed, when they could intervene in the outcome of the events. This includes:
 - sports managers;
 - technical sports personnel;
 - trainers;
 - sportspeople (whether professional or amateur);
 - judges;
 - referees;
 - sports entrepreneurs; and
 - those in charge of the bodies organising the competitions and sports events.
- The employees of the monitoring, inspection and regulatory body.

Restrictions

The licence establishes specific conditions, such as the:

- Duration of the licence.
- Authorised types of games.
- Security deposits.

Online gambling licences only cover the games that have been applied for. Therefore if the licence holder wishes to provide new types of games it must apply for a new licence and seek approval from SRIJ.

Anti-money laundering legislation

See *Question 6, Anti-money laundering legislation*.

B2B AND B2C

9. IS THERE A DISTINCTION BETWEEN THE LAW APPLICABLE BETWEEN B2B OPERATIONS AND B2C OPERATIONS IN ONLINE GAMBLING?

The RJO makes no distinction as to the type of online gambling operators. It is equally applicable to all.

TECHNICAL MEASURES

10. WHAT TECHNICAL MEASURES ARE IN PLACE (IF ANY) TO PROTECT CONSUMERS FROM UNLICENSED OPERATORS, SUCH AS ISP BLOCKING AND PAYMENT BLOCKING?

Whenever SRIJ detects a website that provides online gambling and betting operated by an entity which is not legally qualified to do so, it notifies the entity to cease and desist from the activity and remove the online gambling and betting website from the internet (within a maximum period of 48 hours). In cases of non-compliance, SRIJ issues an order to ISPs to block access to the illegal website, without prejudice to pursuing criminal charges against the website's operator.

MOBILE GAMBLING AND INTERACTIVE GAMBLING

11. WHAT DIFFERENCES (IF ANY) ARE THERE BETWEEN THE REGULATION OF MOBILE GAMBLING AND INTERACTIVE GAMBLING ON TELEVISION?

The RJO is applicable to mobile gambling provided that the games being played in the mobile device are expressly included in the law. This includes:

- Fixed-odds sports betting.
- Mutual and fixed-odds horserace betting.
- Bingo.
- Baccarat.
- Portuguese dice.
- Blackjack.
- Slot machines.
- Tournament poker in tournament mode.
- "Omaha" and "Hold'em", "synthetic" and Caribbean stud poker.
- American and French roulette.

Interactive gambling on television (typically, contests) are governed by Articles 160 and 161 of Decree-Law No. 422/89 of 2 December. The three main Portuguese television broadcasters (RTP, SIC and TVI) have concluded an auto-regulation agreement establishing common rules for television games and contests. *Entidade Reguladora da Comunicação Social*, the media regulation authority, is responsible for monitoring the fulfilment of this agreement. Public bodies such as SRIJ and the Portuguese Competition Authority also have competence to oversee and supervise these broadcasters' activities regarding their compliance with the Publicity Code and Competition Law.

SOCIAL GAMING

12. HOW IS SOCIAL GAMING REGULATED IN YOUR JURISDICTION?

Social gaming is currently not 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 (*Decree Law No. 422/89 of 2 December*). This is mainly due to the belief among Portuguese authorities that skill-based games may prove to be more addictive than traditional games of chance. However, if no prizes in money or with economic value are awarded, then operators may freely provide online skill-based games/social games without needing a licence.

GAMBLING DEBTS

13. ARE GAMBLING DEBTS ENFORCEABLE IN YOUR JURISDICTION?

Generally, the Portuguese Civil Code expressly states that unlawful gambling agreements are void and do not constitute a source of civil obligations. Therefore, debts emerging from these agreements are not enforceable in Portuguese courts.

For authorised gambling, gambling bets are fully enforceable. Under the RJO, operators are required to make a mandatory constitution of a security deposit of EUR500,000, as guarantee of its legal obligations, including the payment of prizes for players. *Santa Casa da Misericórdia* (SCML) is also under the general obligation to hold funds to guarantee the payment of its obligations to players.

TAX

14. WHAT ARE THE APPLICABLE TAX REGIMES FOR LAND-BASED AND ONLINE GAMBLING?

Land-based gambling

Land-based casino games are subject to a special gambling tax (IEJ), varying according to the geographic area where casinos are located. It varies between 4.5% and 40% of the gross gambling revenues (GGR).

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:

- **Games of chance and mutual betting on horse races.** These are taxed on the gross receipts at a tax rate that will range between 15% and 30%. Gross receipts for these purposes are considered the amount of the bets net of the premiums paid.

- **Fixed-odds sports betting and fixed-odds horserace betting.** These are taxed on the volume of the bets at a rate that varies between 8% and 16%.

When the fees charged by the operator are the sole revenue deriving directly from operating games of chance, fixed-odds sports betting and fixed-odds horserace betting, in which the players play against each other, the IEJO is levied on these fees at the rate of 15%.

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

Finally, social 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. There is an exception made to mutual horserace betting, which is subject to IEJO at a rate that varies from 15% to 30%.

ADVERTISING

15. TO WHAT EXTENT IS THE ADVERTISING OF GAMBLING PERMITTED IN YOUR JURISDICTION? TO THE EXTENT THAT ADVERTISING IS PERMITTED, HOW IS IT REGULATED?

Land-based gambling

The Publicity Code (Decree-Law No. 330/90, 23 October, as amended) states that the advertising of gambling and betting must:

- Be conducted in a socially responsible manner.
- Respect the protection of minors, as well as of 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.
- Not encourage excessive gambling or betting practices.

The main prohibitions include:

- Any advertising of gambling or betting that is aimed at or uses minors in the message.
- Advertising of gambling or betting within 250 metres in a straight line from schools or other infrastructures intended to be frequented by minors.
- In locations where events intended for minors are being held or in which these are taking part as main participants, as well as in commercial communications about and the advertising for such events, there must be no reference to gambling and betting (whether explicit or implicit).
- Gambling and betting concessionaires and/or operators must not be associated with any advertising reference to or mention of granting loans.

Online gambling

The same prohibitions and restrictions affecting land-based gambling are also generally applicable to online gambling (*see above, Land-based gambling*).

DEVELOPMENTS AND REFORM

LEGAL DEVELOPMENT

16. HAS THE LEGAL STATUS OF LAND-BASED AND ONLINE GAMBLING CHANGED SIGNIFICANTLY IN RECENT YEARS, AND IF SO HOW?

Land-based gambling

The gambling law (Decree Law No. 422/89, 2 December) for land-based operators has been subject to minor amendments over the years. However, the licensing system and operating rules for casinos and bingo halls have not changed significantly.

Online gambling

Before 29 April 2015, online gambling was not regulated. The approval of RJO established a liberalised market for the provision of online gambling services with the supervision of a monitoring and regulatory authority (SRIJ).

REFORM

17. WHAT, IF ANY, ARE THE LIKELY SHORT-TERM AND LONG-TERM DEVELOPMENTS/ LEGISLATIVE AMENDMENTS CONCERNING GAMBLING IN YOUR JURISDICTION? ARE THERE ANY PROPOSALS FOR REFORM?

Land-based gambling

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

Online gambling

The RJO provides that it must be reviewed within two years starting from the issuance date of the first licence. The law received constant and heavy criticism within the gambling community during its implementation procedure, with the special gambling tax as the main subject of criticism. Associations like the Remote Gambling Association and the Portuguese Online Gamblers Association have expressed their discontent, claiming that this tax system forces gambling operators to increase their operational margins, targeting the burden of the tax directly to the player. In their view, this in turn will lead to the loss of competitiveness for regulated operators and encourage consumers to use the non-regulated markets. Taking into account how heavily the tax regime has been criticised by operators, it is likely that any major change to the law will certainly involve tax related issues.

Social gaming

From several interactions with SRIJ, it is possible to conclude that there is currently no intention to create a separate law regulating social gaming. The regulator's approach is that such type of game must be proposed to SRIJ on a case-by-case basis. SRIJ will then assess if there is any reason not to approve that specific game and will publish the respective execution rules. This procedure will be entirely governed by the RJO and is deemed to take some time, as it seems that social gaming is not currently a priority.

THE REGULATORY AUTHORITIES

SERVIÇO DE REGULAÇÃO E INSPEÇÃO DE JOGOS DO TURISMO DE PORTUGAL (SRIJ)

W www.srij.turismodeportugal.pt/pt/

Description. SRIJ's main responsibilities are:

- Promoting studies, inspections and supervision activities concerning concession agreements for the provision of games of chance.
- Monitoring and issuing guidelines regarding the operation of games of chance.
- Developing co-operation mechanisms adequate to regulate lawful games.
- Issuing technical opinions regarding gambling activities.
- Presenting proposals regarding the tax treatment of gambling, namely in what concerns income allocation.
- Issuing binding orders on compliance with the law and the agreements concluded in what regards gambling issues.
- Determining the performance of investigations, queries and inspections to services and people related to gaming rooms and to gambling operators.
- To take legal action and apply penalties for infringements to gambling law.

SANTA CASA DA MISERICÓRDIA DE LISBOA (SCML)

W www.scml.pt/

Description. SCML's main responsibilities are to:

- Operate the state's social games, notably lotteries and fixed-odds betting.
- Define the rules of the state's social games and fix betting prices.
- Draft the regulations of each social game.
- Analyse infringement procedures regarding the illegal operation of social games envisaging the application of the penalties provided in the law.

ONLINE RESOURCES

W www.srij.turismodeportugal.pt/pt/

Description. This is the official site of SRIJ. It contains all of the relevant legislation regarding land-based and online gambling, although it is only in the Portuguese language. It also contains all the technical regulations in force and a list of the licensed authorities for the provision of certification services and the operation of online gambling. Information is regularly updated.

W www.scml.pt/

Description. This is the official site for Santa Casa da Misericórdia de Lisboa. It contains information regarding Santa Casa's activity, as well as relevant legislation and information governing the institution. The website is available both in Portuguese and in English.

W www.jogossantacasa.pt//

Description. This is the official site for Santa Casa da Misericórdia's Social Games. It contains the relevant regulations for each social game, as well as Report and Accounts of Santa Casa's gambling related activity. All of the information is in the Portuguese language.