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Portugal

GAMBLING LAW

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This country-specific Q&A provides an overview of gambling law laws and regulations applicable in Portugal.

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PORTUGAL GAMBLING LAW



1. What is the legal definition of gambling?

Gambling is generally defined by reference to the play of games of chance. These are, in turn, defined as those games in which the outcome is contingent, as it depends exclusively or predominantly on a player's luck. The definition of gambling is then sub-divided into:

- Land-based gambling – the games and wagers carried out in casinos, bingo halls, or other places previously authorised for such purpose, and which require the physical presence of the player (at such locations).
- Online gambling – games of chance, fixed-odds sports bets and horseracing bets, parimutuel, or fixed odds, carried out remotely, through electronic means, computer media, telematics, interactive media, or any other means through the usage of any devices, equipment or systems that enable the production, storage and transmission of documents, data, and information.

For the purposes of the definition of online gambling, games of chance are defined as those in which the outcome is contingent, as it depends exclusively or predominantly on a player's luck, and in which the player will wage a certain amount in cash.

2. What legislation applies to gambling? Please provide a summary of the legal/regulatory framework.

The main legislation regulating land-based gambling in Portugal is Decree-Law 422/89 (the "Gambling Law"), as subsequently amended. The Gambling Law sets out the legal framework for the commercial operation of games of chance in casino. The operation of online gambling and wagering are governed by Decree-Law no. 66/2015 (the "Online Gambling Law"), as subsequently amended. The legal framework for the operation of bingo halls is provided by Decree-law 31/2011, as subsequently amended.

In addition to the above-mentioned legislation, there are several regulations and regulatory instructions applicable to the operation of land-based and online gambling. These can be accessed through the website of the Gambling Regulation and Inspection Services:

Land-based:

www.srij.turismodeportugal.pt/pt/casinos-e-bingos/regime-legal.

Online:

www.srij.turismodeportugal.pt/pt/jogo-online/regulamentos-instrucoes-e-orientacoes

In parallel to the legislation governing the operation of land-based and online gambling by private entities, there is a specific legal framework governing state-run games. Under Portuguese law, there are certain forms of gambling, such as lotteries (including instant lotteries), land-based sports wagering and horse racing, that are exclusively operated by *Santa Casa da Misericórdia de Lisboa*, a public entity funded by the Portuguese state. The legislation applicable to state-run games is the following:

- Decree-Law no. 40 397, as amended, governs the national lottery.
- Decree-Law no. 84/85, as amended, governs parimutuel sports betting.
- Decree-Law no. 412/93, as amended, governs the "Joker".
- Decree-Law no. 314/94, as amended, governs the instant lottery.
- Decree-Law no. 225/98, as amended, governs the football pools "Totogolo"
- Decree-Law no. 282/2003, governs the online acceptance of wagers and payment of prizes in state-run games.
- Decree-Law no. 210/2004, as amended, governs the European lottery "Euromilhões".
- Decree-Law no. 67/2015, governs the land-based fixed-odds sports betting.
- Decree-Law no. 68/2015, governs the land-based horse race betting.

In addition, there are other relevant legislation applicable to gambling sector:

- Decree no. 14.463, of 3 of December 1927, legalizing gambling in Portugal.
- Law no. 83/2017, anti-money laundering and counter terrorism financing measures.
- Law no. 8/2006, regulates the hiring of casino croupiers/dealers.
- Decree-Law no. 330/1990, as amended, approves the Advertisement Code.

3. Which body/ies regulate gambling?

The regulation of gambling in Portugal is conducted jointly by:

The Gaming Commission (“*Comissão de Jogos*”) – which co-ordinates and overviews the activity of the Gambling Regulation and Inspection Service, having control, supervisory, regulatory, and sanctioning powers; and

The Gambling Regulation and Inspection Service (“*Serviço de Regulação e Inspeção de Jogos*” or “SRIJ”) is the entity responsible for the control, inspection, and regulation of gambling activities in casinos and bingo halls, as well as of online games of chance, sports betting, and horse racing wagering.

The Gaming Commission and the SRIJ are departments of the National Tourism Authority.

Separately, the *Santa Casa da Misericórdia de Lisboa* is the entity empowered to monitor (in addition to operating) state-run games. It does so under the supervision of the Ministry of Labor, Solidarity and Social Security.

4. Are licences available? If so: a) What is the duration of a licence? b) What types of licences are available? c) Are there different types of licences for B2C and B2B operators? d) Do software suppliers need to be licensed?

- Land-based casino and bingo-hall licenses are granted to private entities in the form of a concession contract, awarded following a public tender process. The maximum duration of each contract may vary in each concession and is pre-defined in the respective public tender documents. As a reference, the public tender for the casino concession contract of the Estoril/Lisbon gaming area, launched in August 2022, determined a duration of 15

years, extendable for one time for 5 additional years.

- Licenses for online gambling are valid for the duration of 3 years counting from the date of respective issuance and may be extended for successive periods of 3 years if the operator fulfils the relevant legal requirements.

There are three main types of gambling licenses available:

- Land-based casinos – granted to private entities in the form of a concession contract, awarded following a public tender process. There are currently 12 casinos and one slot-hall operating within 9 gambling areas statutorily defined under the Gambling Law. Although there is no limit to the number of casino concessions to be granted, the availability of licenses is dependent on the opening of a public tender to that effect. It may be expected that public tenders are only launched for the existing concessions, when the respective contracts are approaching their term.
- Land-based bingo hall licenses – granted to private entities in the form of a concession contract, awarded following a public tender process. There are currently 14 bingo hall concession contracts. Although there is no limit to the number of bingo concessions to be granted, the availability of licenses is dependent on the opening of a public tender to that effect. It may be expected that public tenders are only launched for the concessions already in existence, when the respective contracts are approaching their term.
- Online gambling licenses – licenses are available for the following types of online gambling: (i) fixed-odds sports betting; (ii) parimutuel and fixed odds horse racing wagering; (iii) online bingo; and (iv) online games of chance. Differently to land-based casinos, online gambling is not operated under a concession contract and the award of a license is not subject to public tender. A license is granted to an applicant that fulfils all legal requirements following an administrative licensing proceeding that takes place before the SRIJ.

No, only B2C operators are currently subject to licensing.

No, software suppliers do not currently need to be licensed.

5. Are any types of gambling products prohibited?

Only gambling products that are pre-approved are allowed to be offered by either a land based or an online operator. All other gambling products are prohibited until expressly approved by the relevant authorities. The gambling products that are currently regulated to be offered are the following:

Gambling Products	Land-Based Casinos	Online
Baccarat punto banco	Y	Y
Baccarat punto banco/Macau	Y	Y
Blackjack/21	Y	Y
Craps	Y	Y
Cussec (Sic Bo)	Y	Y
Caribbean Stud Poker	Y	Y
American Roulette	Y	Y
French Roulette	Y	Y
Baccarat Chemin de Fer	Y	Y
Bingo	Y	Y
Poker (Omaha, Hold 'em, Spanish)	Y	Y
Slot Machines	Y	Y
Sports Betting	N	Y
Horse Race Wagering	N	Y

6. What is the headline application procedure? Please include any eligibility and other application requirements, including approximate application costs and any need to establish a local presence.

Land-based gambling

The award of a land-based casino concession contract is preceded by a public tender. The tender may be open or limited to pre-qualified entities. The decision to open a tender, to approve its proceedings and documentation, including the concession contract draft, and to ultimately award a concession, is of the government cabinet member with the tourism portfolio (typically the Ministry of Economy). However, the overview and execution of the tender are normally delegated in the gaming commission of the National Tourism Authority, which appoints a jury panel to analyse the proposals and prepare a report on their feasibility and merits.

The tender documents must define the following:

- The duration of the concession and the possibility of its extension.
- The applicants' qualification criteria.
- The location of the casino and the assets allocated to the concession.
- The criterion for awarding the concession.
- The minimum financial consideration, other non-financial consideration (if any) and respective payment terms.
- The amount and form of the tender and performance bonds to be provided.

There is typically no application fee to be paid but the winning bidder must pay the cost associated with the execution of the contract and its publication in the official gazette. In respect of duration, there is no statutory deadline for the tender process to be completed, instead each tender will determine its own timeline. As a reference, the public tender for the concession contract of the Estoril/Lisbon gaming area, launched in August 2022, determined a 60day deadline for applications to be submitted and the respective proposals had to be valid for 180 days.

The following are the eligibility criteria for an entity to participate in a public tender awarding a land-based casino concession:

- The applicant/bidder must be incorporated as a joint stock company (*sociedade anónima*), or any equivalent, in an EU member state or any other state signatory to the European Economic Area Agreement under administrative co-operation in the fields of tax, combating fraud and anti-money laundering. An applicant/bidding company that is not incorporated in Portugal must form and register a branch in Portugal.
- The applicant/bidder must have an equity to net assets ratio of no less than 30%.
- The applicant/bidder must have at least 60% of its share capital represented by shares that allow the issuer to identify the respective holders.

Online gambling

The award of an online gaming license is preceded by a licensing process that takes place before the SRIJ. The license application must be submitted on a standard form, together with all supporting documents required to demonstrate that the operator fulfils all legal eligibility requirements. Applications may be made electronically and the SRIJ generally takes between 6 to 12 months to issue a determination.

The following are the main requisites for an applicant to be issued an online gambling license:

- The applicant/bidder must be incorporated as a joint stock company (*sociedade anónima*), or any equivalent, in an EU member state or any other state signatory to the European Economic Area Agreement under administrative co-operation in the fields of tax, combating fraud and anti-money laundering. An applicant/bidding company that is not incorporated in Portugal must form and register a branch in Portugal.
- The scope of business of the applicant must include the operation of gambling and wagering and its equity to net assets ratio must be no less than 35%.
- The applicant must be compliant with its tax and social security obligations.
- The applicant must be suitable, financially sound and have technical capability.
- The applicant must submit the technical plan for its gambling system, according to best practices in terms of software architecture and technology, and incorporating all elements required by law.

Upon a positive determination is made the issuance of a license is conditioned to the following:

- Certification of the gambling technical system.
- Payment of the application fees.
- Payment of the performance bonds and guarantees.
- Payment of any overdue penalties applied under the Online Gambling Law (if any).

The following are the applicable licensing fees:

- Certification of the technical gaming system - EUR18,000.00
- License issuance (per each license) - EUR12,000.00
- License extension (per each license extension) - EUR12,000.00
- Authorization for each new type of game of chance or wager category - EUR 2,000.

Additionally, the bonds required to be given prior to the license being issued are the following:

- EUR500,000 to guarantee compliance of the applicant's ongoing legal obligations; and
- EUR100,000 to guarantee the payment of the special gaming tax.

7. Do individuals within the business need to be personally licensed or authorised? If so, please provide headline requirements.

Only casino croupiers or dealers need to be authorized. To be authorized as a dealer, an individual needs to obtain a professional certificate from the Institute for Tourism Training, following completion of a training program and examination. In addition, all casino staff, including the dealers must fulfil the following requirements:

- be at least 18 years of age.
- be of good repute for the exercise of the profession, i.e., without a conviction by a final and unappealable court sentence for committing a crime against property or any other crime punishable by a prison sentence of more than five years shall be considered as indicative of unsuitability.

8. Is advertising of gambling permitted and, if permitted, how is it regulated?

Advertising of gambling is permitted provided it complies with the following requirements:

- be carried out in a socially responsible manner.
- taking into consideration the need to protect minors, as well as other risk groups.
- highlighting the recreational aspect of the activity and not diminishing non-gamblers.
- not implying that gambling brings easy winnings, social advancement, or special skills.
- not promoting excessive gambling or wagering practices.

Moreover, gambling concessionaires and licensees cannot associate themselves or be referenced in any advertisement to the granting of credit facilities.

Furthermore, there are series of measures aimed at protecting minors, such as prohibiting gambling advertisement addressed to minors or using minors. In addition, gambling advertisements cannot be placed inside or within 250 metres from schools or other facilities destined to the use of minors or in any events in which minors are the main participants.

9. Are marketing affiliates permitted? If so, are they licensed or regulated?

There are no specific regulations concerning the use of

affiliates.

10. What are the penalties for offering, facilitating or marketing unlawful gambling, and can the gambler be penalised for participating in unlawful gambling?

The operation of land-based gambling activities outside the legally authorized areas is a criminal offence, punishable with imprisonment of up to 2 years and a monetary fine. The same punishment is applied to the individuals responsible for such operation, including directors, managers, employees, and agents of the offending entity.

In respect of online activities, the unauthorized operation, promotion, facilitation, or organization of online gambling activities is a criminal offence punishable with imprisonment of up to 5 years or a monetary fine. The same punishment is applied to whomever makes its online gambling platform available in Portugal from servers located overseas.

Regarding gamblers, playing games of chance outside legally authorized areas is a criminal offence punishable with imprisonment of up to 6 months and a monetary fine. Whomever is found at an unlawful gambling site (but not playing) is also punishable with imprisonment of up to 3 months.

11. Briefly detail key requirements for licensees.

Land-based gambling

The following are some of the key statutory requirements applicable to a land-based operator:

- The operation of games of chance is only allowed in pre-authorized casinos located in one of the statutorily defined gaming areas.
- The casino concessionaires are responsible for the functioning and maintenance of the casino property and of its facilities, particularly the ones property of the state and assigned to the operator under the concession contract.
- The casino concessionaires must promote entertainment, cultural and sporting activities, as well cooperate in initiatives to promote tourism in the respective gaming areas.
- The casino concessionaires can only use gaming equipment and utensils that are approved by the SRIJ.

Other requirements can be imposed under the concession contracts for each gaming area and will vary according to their terms. These may include:

- The obligation to install and operate an electronic gaming machines system.
- The obligation to purchase, install and operate adequate CCTV equipment.
- The obligation to adopt International Financial Reporting Standards.

Online gambling

The following are some of the key statutory requirements applicable to an online operator:

- install and maintain a technical gaming system for the operation of online games and betting, under the terms defined in the Online Gambling Law.
- redirecting to its Portuguese website all accesses that are established from locations within Portuguese territory or that make use of player accounts registered in Portugal.
- create a registration and an account for each player.
- define a policy for awarding bonuses to players.
- pay players their prizes in the agreed amount.
- order the transfer to the payment account previously indicated and held by the players of the balance of the player's account, as soon as requested by a player.
- have a bank account in a credit institution licensed in a member state of the European Union, through which all transactions related to online gambling and betting activity are exclusively carried out.
- ensure the integrity, availability, confidentiality and all other security attributes of online gambling and betting, guaranteeing a reliable and transparent play.
- make available and provide information on the rules of online gambling and betting in a clear, true, complete, and up-to-date manner, including the payment methods accepted, the minimum and maximum bet values and the rules for calculation and payment of prizes.
- define a privacy policy, which must be expressly accepted by the player, in which the minimum information that is requested is identified, as well as the purpose for which it is intended and the conditions under which it may be disclosed.
- designate a manager responsible for the operation of online gambling and betting, who

- will be the key contact for the SRIJ.
- ensure compliance with the laws in force regarding the prevention of money laundering and the financing of terrorism.
- develop and implement means to prevent minors and other socially vulnerable groups from registering as players.
- Cooperate in the fight against illegal gambling and associated illicit activities, namely by complying with the preventive provisions set forth by law.
- notify the SRIJ of any change in the composition of its governing bodies, within 10 days of that change.

12. Briefly detail key anti-money laundering requirements.

Law No. 83/2017, which transposes the anti-money laundering European Union Directive 2015/849, contains measures regarding the prevention of use of financial system for the purpose of money laundering. Gambling operators in Portugal are also subject to this law and must comply with the following key obligations: (i) customer due diligence measures; (ii) record-keeping; (iii) reporting of suspicious transactions.

13. Briefly detail key responsible gambling (or safer gambling) requirements.

In respect of land-based gambling, responsible gambling requirements are only focused on access to the gambling floor being restricted to minor and other risk groups and to exclusion and self-exclusion mechanisms.

On the other hand, online gambling operators must adopt a responsible gambling program and implement measures that guarantee the practice of responsible gambling and provide the public with necessary information to promote moderate and non-compulsive gambling attitudes. Such program must include a policy on information and communication with the players regarding responsible behaviours and the harm caused by addiction to gamble, measures to protect minors and other risk groups, including individuals that self-exclude, mechanisms to allow a player to limit the amounts deposited to its account and to limit its wagers and mechanisms for self-exclusion and play time limitation.

14. Briefly detail shareholder reporting and approval threshold(s).

Land-based gambling

Shareholder reporting – the gambling concessionaire must report the transfer or pledge of any of its registered shares (which must always represent at least 60% of its share capital) within 30 days of becoming aware of such transfer or pledge.

Approval Thresholds – the acquisition, by any means, of shares representing more than 10% of the share capital of a casino concessionaire or which directly or indirectly causes a change in control of the concessionaire, as well as the assignment to a third party of the gambling operations and other contractual obligations of the concessionaire is subject to pre-approval of the government cabinet member with the tourism portfolio (typically the Ministry of Economy). In addition, tender documents may prevent or limit direct or indirect participation in the share capital of a concessionaire by another concessionaire and impose obligations of pre-approval in the event of a merger, demerger, or conversion of the concessionaire.

Online gambling

An online gambling license may only be transferred to a third party with the pre-approval of the SIRJ. A license is deemed to be transferred in the event of a merger or demerger, as well as in the event of a direct or indirect transfer of shares of the licensee, whereby the acquiring entity comes to hold a majority stake in its share capital, to have more than half the voting rights or the ability to appoint more than half the members of the board of directors.

15. Briefly detail the regulator's enforcement powers, including sanctions.

The SRIJ has the power to conduct investigations and to initiate administrative and misdemeanour proceedings against casino concessionaires, online gambling licensees, gambling employees, as well as gamblers for breach of law or of the terms of the respective license or concession contract.

The Gaming Commission has the power to decide the administrative and misdemeanour proceedings initiated by the SRIJ and to apply monetary fines and other sanctions, including the suspension or revocation of online gambling licenses. However, the suspension or revocation of gambling concession contracts is determined by the national government's cabinet of ministers. The decisions issued by the SRIJ in these proceedings are appealable to a court of law under applicable procedural rules.

Unlawful gambling activities that may constitute a criminal offence must be reported by the gaming

regulatory authorities to the police forces or the public prosecution for investigation.

16. What is the tax rate?

Land-based gambling

Land-based casino games are subject to a special gambling tax (IEJ), levied over the monthly opening float (not gross revenue). The special gaming tax varies according to the geographic gaming area where casinos are located.

In addition, a casino concessionaire will have to pay a financial consideration under the terms of its concession contract. In the case of the Estoril/Lisbon concession, this consideration is (pursuant to the tender documents released in August 2022), composed of a fixed consideration of no less than approximately EUR10 million and a variable consideration of between 40% to 50% of the gross-gaming revenue. The variable consideration must not, in any event, be less than EUR51,6. Both the fixed consideration and the minimum variable consideration will be update annually according to Portugal's consumer price index. The payment of the variable consideration discharges the obligation to pay the special gaming tax (in the amount that does not exceed such consideration) and other government fees.

Online gambling

Online gambling is subject to a special online gambling tax, applicable as follows:

- Games of chance and pari-mutuel betting on horse races – fixed tax rate of 25% levied on gross gaming revenues.
- Fixed-odds sports betting and fixed-odds horse racing betting – fixed tax rate of 8% over the handle (total amount of money wagered).
- Sports betting exchange (where player bet against each other) – fixed tax rate of 35% over the commissions charged by the operator.

17. Are there any proposals for changing gambling laws and regulations in the next 12-24 months? If so, please provide an overview of the proposed changes and likely timing.

There are no foreseen proposals for changing gambling

laws and regulations in the next 12-24 months.

18. What key regulatory developments are proposed or on the horizon in the next 12-24 months?

New laws and regulations concerning privacy and the protection of personal data in electronic communications (ePrivacy) as well in cybersecurity are expected to be enacted. These may impact gambling operators, particularly in the online sector.

19. Do you foresee any imminent risks to the growth of the gambling market in your jurisdiction?

The CV19 pandemic has disrupted the land-based market with casino gross gaming revenues declining year-on-year by 50% in 2020 and by another 10% in 2021. Meanwhile, online gambling revenues have experienced a steady increase of 61% and 55% in 2020 and of 56% and 61% in 2021, respectively in games of chance and sports betting. With the removal of public health restrictions, the market is experiencing a revival of land-based casinos with revenue increasing a steady 147% in the first three quarters of 2022 but still below pre-pandemic levels. In our view, the key risk to the gambling sector in the Portuguese market is associated with the potential long-term slowdown of the land-based casino segment and the ability of current or future operators to discharge the fixed and minimum financial contributions associated with their respective concession contracts.

20. If a gambling start-up was looking for a jurisdiction in which to commence its activities, why would it choose yours?

Since the regulation of online gambling in 2015, Portugal has become a mature market with 15 operators and 26 licenses issued (11 sports betting licenses and 15 games of chance licenses) with a total gross gaming revenue of EUR503 million in 2021. Nevertheless, the increasing number of foreigners residing in Portugal, particularly digital nomads, may further stimulate demand and create opportunities both for B2B and for B2C operators. In the land-based segment, there are three concession contracts to operate a total of six casinos (two near Oporto and three in the Algarve region) that will end on the 31st of December 2025. The government will launch a public tender for each of these concessions which will create an opportunity for new operators to enter the land-based market.

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