

# Gaming 2021

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Contributing editor

**Behnam Dayanim**

Paul Hastings LLP

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Lexology Getting The Deal Through is delighted to publish the fourth edition of *Gaming*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Belgium, China, Macao and Portugal.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Behnam Dayanim of Paul Hastings LLP, for his continued assistance with this volume.



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# Contents

<b>Introduction</b>	<b>3</b>	<b>Nigeria</b>	<b>47</b>
Behnam Dayanim Paul Hastings LLP		Yahaya Maikori and Osayamen Ojo Law Allianz	
<b>Gambling activities and EU law</b>	<b>4</b>	<b>Norway</b>	<b>52</b>
Philippe Vlaemminck and Mathilde Thibault Pharumlegal		Brede A Haglund and Alexander Mollan Brækhus Advokatfirma	
<b>Australia</b>	<b>7</b>	<b>Poland</b>	<b>58</b>
Jamie Nettleton, Joseph Abi-Hanna and Brodie Campbell Addisons		Piotr Dynowski and Michał Sałajczyk Bird & Bird Szepietowski i wspólnicy sp.k.	
<b>Belgium</b>	<b>14</b>	<b>Portugal</b>	<b>65</b>
Philippe Vlaemminck and Robbe Verbeke Pharumlegal		Pedro Cortés Rato, Ling, Lei & Cortés Advogados	
<b>Brazil</b>	<b>20</b>	<b>Spain</b>	<b>72</b>
Luiz Felipe Maia, Flavio Augusto Picchi and Maria Luiza Kurban Jobim Franco, Yoshiyasu & Maia Sociedade de Advogados		David López Velázquez Uría Menéndez	
<b>China</b>	<b>28</b>	<b>United Kingdom</b>	<b>78</b>
Mark Cheng Chen Gan Jincheng Tongda & Neal		Jessica Wilson Harris Hagan	
<b>Japan</b>	<b>34</b>	<b>United States</b>	<b>88</b>
Takashi Nakazaki Anderson Mōri & Tomotsune		Behnam Dayanim, Jeremy Gordon and Rachel Miller Paul Hastings LLP	
<b>Macao</b>	<b>40</b>		
Pedro Cortés Rato, Ling, Lei & Cortés Advogados			

# Spain

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## GENERAL LEGAL FRAMEWORK

### Legal definition of 'gambling'

1 | What are the legal elements required for an activity to be regarded as gambling?

Spain is divided into 17 administrative divisions, known as autonomous communities, and pursuant to Spanish constitutional rules, the autonomous communities assume exclusive responsibility for regulating gambling at a subnational level. Gambling requirements vary from one autonomous community to another. In addition, as it is difficult to restrict online gambling to a single autonomous community, online gambling is regulated at state level (but the opening of retail shops where online gambling is offered requires the relevant autonomous community's approval). The state-wide piece of legislation on gambling is Law No. 13/2011 on gambling, as amended (the Gambling Act). This chapter focuses on nationwide gambling regulations, and general principles consistently applicable in most autonomous communities, although exceptions could apply.

With respect to the legal elements required for an activity to be regarded as gambling, the Gambling Act requires:

- money or economically valuable goods placed by participants to be at stake;
- future and uncertain events (thus excluding past facts), that to some degree depend on chance (regardless of the degree of chance or skill that influences the outcome), to determine the right to the prize; and
- the possibility for sums wagered to be transferred between participants (thus excluding 'pay-to-play' games, where the participant cannot win any prize).

### Remote activity

2 | With respect to remote or other cross-border activity, where is the wager deemed to take place?

In general, no cross-border activity is permitted. Both the participant and the operator must be in Spain. Licences and authorisations issued by foreign countries (including EU and EEA member states) are not valid or recognised in Spain. Operators licensed in EEA member states may apply for recognition of their licences in Spain through the issuance of a Spanish licence, but the original foreign licence is not the valid title per se.

The exception is certain international liquidity games expressly authorised by the regulator (eg, the EuroMillions lottery), where the pool for prizes includes funds wagered in Spain and other countries.

### Age restrictions

3 | What is the minimum age for participating in lawful gambling?

The minimum age for lawful gambling is 18.

### Penalties

4 | What are the penalties for offering unlawful gambling?

Penalties are different for state-wide (online gambling) and gambling across the regions. Under the State-wide Gambling Act, the organised performance or advertisement of gambling activities without the required licences is considered a serious violation. Sanctions for serious violations comprise fines ranging from just over €1 million to €50 million and, potentially, a ban on providing gambling activities under the Gambling Act for up to a maximum four-year term or closure of means used to provide information society services supporting gambling activities, and the seizure or destruction of any element related to the gambling activity illegally carried out.

5 | Does the law penalise the gambler directly for participating in unlawful gambling?

Yes, but only to the extent that the gambler incurs a prohibition to participate in gambling activities. The following individuals are forbidden to participate in specific gambling activities:

- shareholders, officers and employees of the relevant gambling operator, as well as certain related persons (husband, wife, parents, sons and daughters);
- sportsmen and women, coaches and other direct participants in sports events over which a bet is placed;
- directors and officers of sports clubs or organisers of the sports events over which a bet is placed;
- referees and judges of sports events over which a bet is placed; and
- members of the gambling regulator and certain related persons (husband, wife, parents, sons and daughters).

Otherwise, the gambler is not penalised just for participating in unlawful gambling, although other infractions could apply (eg, tax evasion if the winnings are not declared to the tax authorities).

### Social and non-profit gambling

6 | Are there exceptions for social gambling, or charitable or non-profit gambling?

Yes. Social non-profit gambling where nominal amounts are wagered is out of the scope of gambling regulations. Charitable gambling is not included in this exception and is subject to general gambling requirements.

**Regulatory authorities**

**7 | What entity regulates land-based and remote gambling, and what are the regulator's powers?**

Land-based gambling is regulated by administrative bodies within each autonomous community. At a national level, the Gambling Act provided for the creation of a new regulator, the National Gambling Commission (CNJ). However, the CNJ has yet to be formally set up and there are no expectations that this will happen in the short term. Until the CNJ is formally set up, the Directorate-General for Gambling Regulation (DGOJ), a body within the Spanish government, holds the corresponding powers.

The DGOJ supervises the functioning of the gambling sector and safeguards the effective availability and provision of competitive gambling services for the benefit of users. The DGOJ's powers include, among others, the ability to:

- grant gambling licences;
- run the registries created by the Gambling Act;
- resolve claims filed by participants against gambling operators;
- prosecute unauthorised gambling;
- arbitrate disputes among gambling operators at the request of the parties;
- implement basic gambling regulations;
- establish technical and functioning requirements for the games;
- monitor, inspect and sanction, as the case may be, gambling activities, especially those related to games exclusively assigned to the state-owned operator, Loterías y Apuestas del Estado, and the National Organisation of the Blind in Spain under the Gambling Act, without prejudice to the faculties of the relevant Spanish antitrust authorities;
- approve regulations in the terms developing the Gambling Act;
- safeguard compliance with money laundering and terrorism financing legislation; and
- manage and collect gambling tax.

**Anti-money-laundering regulations**

**8 | Are gambling licensees considered financial institutions for purposes of anti-money-laundering and similar financial services regulatory requirements or are they otherwise subject to such requirements?**

All gambling operators are deemed 'obliged subjects' under Spanish anti-money laundering (AML) regulations. However, applicable AML requirements vary depending on the type of gambling activity performed by the relevant operator. Casino operators are subject to more stringent requirements than operators of lottery and other gambling activities.

In particular, entities that run casino activities are fully subject to AML laws, and their obligations include:

- appointment of a representative before the Spanish AML authority (SEPBLAC);
- appointment of an internal body responsible for the application of AML policies;
- approval of internal procedures and inclusion of such procedures in an internal manual;
- approval of an internal risk assessment, prior to the approval of the internal manual; and
- submission of its procedures to external audit.

Entities responsible for the management, exploitation and marketing of lotteries and other gambling activities are subject to AML laws with respect to transactions related to the payment of prizes only. These entities are subject to less stringent requirements than casinos, which include, without limitation, the following:

- approval of an internal manual, including:

- the procedures to identify clients in cases of payment of prizes over €2,500;
- a catalogue of examples of risk transactions; and
- the procedures to carry out special analysis of suspicious transactions;
- appointment of a representative before SEPBLAC;
- performance of annual training programmes for employees; and
- submission of its procedures to external audit.

**LAND-BASED GAMBLING**

**Types**

**9 | What types of land-based gambling are permitted in your jurisdiction, and is gambling regulated at a national or subnational level?**

The following land-based gambling activities are permitted in Spain:

- casinos;
- bingo;
- slot machines;
- betting shops; and
- lotteries.

Applicable requirements to operate each activity depend on the autonomous community where the activity is performed, as land-based gambling is regulated at a subnational level.

Pursuant to the Gambling Act, operation of national non-occasional lottery games is reserved for two operators: the Loterías y Apuestas del Estado (LAE) and National Organisation of the Blind in Spain (ONCE).

**Establishment licensing**

**10 | Please describe the licensing criteria and procedures to operate land-based gambling of each type or classification. Does your jurisdiction limit the number of available licences?**

Although licensing criteria vary depending on the relevant autonomous community, in general, the following applies.

- Casino licences are awarded pursuant to a public tender process.
- Bingo halls require two authorisations from the relevant autonomous community: authorisation for the installation of the bingo hall premises and authorisation for the operation of the bingo hall. The requirements for the installation authorisation include proving the availability of a site, providing a guarantee to the relevant autonomous community in order to ensure compliance with regional regulations, obtaining the relevant local permit to operate the bingo hall premises and the relevant local planning council's permission to build on the proposed site. The requirements for authorisation of operation include filing certain documents with the regional authority, such as a list of employees, and complying with an on-site inspection of the bingo hall premises.
- Slot machine manufacturers, distributors and operators must register with, and be approved by, the gaming authority of the autonomous community in which they intend to conduct operations. Each type of slot machine must comply with specific requirements set forth in the applicable laws and regulations of the autonomous community where they are located. Registration of the relevant model is mandatory prior to obtaining any of the authorisations to manufacture, market, distribute or operate each slot machine model. Additionally, each slot machine must be marked with the name of the manufacturer and the operating permit.
- Betting shops generally require the registration of the operator and the deposit of a guarantee of an amount that varies depending on the autonomous community.

- Lotteries are reserved state-wide to the LAE and ONCE. Some autonomous communities have subnational lottery operators (eg, Catalonia, where lottery operations are carried out by a body belonging to the regional government).

With respect to limits on the number of available licences, most autonomous communities restrict the number of gambling premises that can be placed on specific areas. For instance, sites at which slot machines can be placed and the number of slot machines per site are regulated. Most autonomous communities allow only one or two slot machines per bar, café or restaurant, or a certain number per gambling hall.

### Director, officer and owner licensing

#### 11 | Must individual directors, officers or owners of licensees also be licensed or reviewed for suitability?

Yes. In general, controlling shareholders and directors of gambling companies must not have been convicted of a criminal offence.

### Location

#### 12 | May a gambling location be part of a resort, restaurant or other multi-purpose location? What limitations apply?

Yes. Slot machines are usually placed in a bar, café or restaurant, some of which are also points of sale for the lottery. Bingo halls and betting shops usually offer food and drink. In turn, casinos are specific-purpose locations (which offer ancillary services as well, such as food, drink and concerts).

### Casino development

#### 13 | What considerations arise in developing a casino resort project that are not typical to other resort development?

There are no specific requirements or considerations.

### Passive/institutional ownership

#### 14 | Are there provisions for passive or institutional ownership that allow for exemption or modification of licensing requirements?

No.

### Responsible gambling

#### 15 | What responsible gambling obligations apply to licensees?

There is a centrally maintained exclusion list of persons who may not gamble, which each licensee must check and implement.

### Taxes

#### 16 | What type of tax and what tax rate applies to each form of lawful land-based gambling activity?

Gambling activities are subject to gambling tax and gambling duty, which are managed and collected by the Spanish State Tax Administration Agency (AEAT) or, as the case may be, the autonomous communities or applicable tax region where the gambling businesses are located.

The gambling tax is managed and collected by the AEAT and is based on applying fixed tax rates ranging from 15 per cent to 25 per cent, depending on the gambling activity, to either the game's gross revenue (in the case of mutual bets, raffles and contests) or the game's net revenue (in the case of bets with consideration or other games).

The main business subject to gambling tax is digital sports betting. For this type of business, gambling tax is triggered at a 25 per cent rate

on the game's net revenue. Gambling tax will accrue on 1 January every year and must be filed and paid on a quarterly basis (within the next month after the end of every quarter).

The gambling duty is managed and collected by each of the autonomous communities in which the gambling businesses are located. The gambling duty tax period depends on the regulations passed by each regional government. As a general rule, tax periods elapse:

- on a quarterly basis in the Canary Islands, Cantabria, Catalonia, Extremadura, Galicia, La Rioja and Madrid;
- each semester in Andalusia and Castilla-La Mancha; and
- on an annual basis in Álava, Aragón, Asturias, the Balearic Islands, Castilla y León, Gipuzkoa, Murcia, Navarre, Comunitat Valenciana and Biscay.

The taxation applicable to each of the gambling businesses is particularly complex, as it depends on the specialities included in each tax region.

In addition to the gambling tax and the gambling duty, there is an administrative gaming management duty equal to 0.075 per cent of the gross revenue of the corresponding game, which is, as a general rule, accrued annually on 31 December and must be filed and paid in January of the following year. This duty should only apply to those games subject to, and not exempt from, gambling tax. Specific duties (which, in most cases, are not significant) also apply to specific administrative actions related to gaming.

## REMOTE GAMBLING

### Types

#### 17 | Is remote gambling permitted and, if so, what types?

Yes. In order for an online gambling game to be permitted in Spain, it must be specifically regulated by the Ministry of Finance and Taxation. To date, there are 14 regulated (permitted) types of online game in Spain:

- slot machines;
- roulette;
- baccarat;
- bingo;
- blackjack;
- poker;
- fixed odds horse betting;
- fixed odds sports betting;
- other fixed odds betting;
- complementary games;
- betting exchanges;
- sports pools betting;
- horse pool betting; and
- contests.

### Licensing

#### 18 | What are the criteria for obtaining a licence to operate remote gambling?

The operation of remote gambling activities is subject to the granting of a licence by the Directorate-General for Gambling Regulation (DGOJ). The Gambling Act distinguishes two types of licence: general and specific.

Any operator interested in the provision of non-occasional games must obtain a 10-year general licence for the relevant general category of game identified by the Gambling Act it intends to offer – for example, bets, contests or other games.

The exploitation of each of the specific games within the scope of a general licence is subject to the granting of a one- to five-year specific licence.

**19 | How do the licensing criteria for remote gambling operators differ from those applicable to land-based operators?**

The DGOJ is authorised to award general licences by calling a public tender. The process intended to award general licences through a public tender may be initiated by the DGOJ directly or in response to a third-party request. Once a public tender is called for the granting of general licences for a given category of game, no further public tenders may be called until 18 months have lapsed from the previous tender for the same category of game.

The terms of the tender cannot limit the number of licences to be awarded unless the DGOJ concludes, prior to carrying out the corresponding procedure, that it is necessary to limit the game that is the subject of the tender and limit the number of operators entitled to provide it. This limitation may be only based on reasons of public interest, protection of youths or the prevention of gambling addiction. To date, the number of licences has not been limited in any tender.

General licences may be granted for a 10-year period with the possibility for renewal for a subsequent 10-year period, except for cases in which the number of general licences awarded was limited and certain circumstances set forth in the Gambling Act occur that justify the need to call a new public tender after the initial term elapsed.

Operators holding a general licence are entitled to apply for specific licences. Prior regulation of the relevant specific game is mandatory in order to apply for the corresponding specific licence. Any gambling activity carried out without holding the appropriate licences is forbidden. This was the case of exchange betting until 2014 where the game was defined under the Gambling Act; however, unlike other specific games, it was unregulated and therefore exchange betting was not allowed.

Specific licences are granted for a term of between one and five years, with the possibility of renewal for subsequent terms of the same period. The regulations governing each type of game establish the term of the corresponding specific licences and the conditions for renewal.

**Cross-border gambling**

**20 | May operators located in other countries offer internet gambling to consumers in your jurisdiction without obtaining a licence there?**

No. Licences and authorisations issued by foreign countries (including EU and EEA member states) are not valid or recognised in Spain. Operators licensed in EEA member states may apply for recognition of their licences in Spain through the issuance of a Spanish licence, but the original foreign licence is not the valid title per se.

**21 | May operators licensed in your jurisdiction offer internet gambling to consumers in other countries?**

No.

**Taxes**

**22 | What tax rate applies to each form of remote gambling?**

The gambling tax is managed and collected by the Spanish State Tax Administration Agency and is based on applying fixed tax rates ranging from 15 per cent to 25 per cent, depending on the gambling activity, to either the game's gross revenue (in the case of mutual bets, raffles and contests) or the game's net revenue (in the case of bets with consideration or other games).

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per cent rate on the game's net revenue. Gambling tax will accrue on 1 January every year and must be filed and paid on a quarterly basis (within the next month after the end of every quarter).

In addition to the gambling tax and the gambling duty, there is an administrative gaming management duty equal to 0.075 per cent of the gross revenue of the corresponding game, which is, as a general rule, accrued annually on 31 December and must be filed and paid in January of the following year. This duty should only apply to those games subject to, and not exempt from, gambling tax. Specific duties (in most cases, not significant) also apply to specific administrative actions related to gaming.

**INTELLECTUAL PROPERTY**

**Patents**

**23 | Are gambling games – land-based or remote – patentable in your jurisdiction?**

As a general rule, no. Certain utility models may be subject to registration provided that specific requirements are met.

**Trademarks**

**24 | Are there limitations on how brands, logos or other types of marks may be used in promoting gambling games?**

Yes. Gambling operators' brands, logos and trademarks cannot be displayed on sports clubs' kits due to new regulations on the advertising of gambling activities (Royal Decree 958/2020) that forbid gambling operators from sponsoring those kits.

**ADVERTISING**

**Restrictions**

**25 | What types of restrictions apply to advertising gambling games?**

Advertising, sponsorship or promotion related to gambling activities subject to the Gambling Act or to gambling operators is forbidden unless authorised in the corresponding licence.

New regulations (Royal Decree 958/2020) limiting advertising of gambling activities were enacted in November 2020. These new regulations restrict gambling advertising in audiovisual media to specific late-night times (from 1am to 5am), limit the types of messages that gambling advertisements may include and forbid the offering of gambling bonuses to new customers (although they are allowed for existing customers with certain requirements). In addition, gambling operators are forbidden from sponsoring sports clubs' kits.

**SUPPLIERS**

**Licensing**

**26 | What types of suppliers to gambling operators require licences?**

With regard to land-based gambling, gambling machines, devices and tools are subject to detailed requirements and regulations (which vary depending on the relevant autonomous community). In particular, each type of slot machine must comply with specific requirements set forth in the applicable laws and regulations of the autonomous community where they are located. Registration of the relevant model is mandatory prior to obtaining any of the authorisations to manufacture, market, distribute or operate each slot machine model. Additionally, each slot machine must be marked with the name of the manufacturer and the operating permit.



With regard to online gambling, although suppliers are not licensed per se, IT systems must be approved by the Directorate-General for Gambling Regulation (DGOJ), which monitors compliance with technical requirements at different stages. Prior to issuing a licence, the DGOJ reviews technical projects and preliminary certification reports. Final approvals are awarded within six months of obtaining the licence, and any changes to the approved system must be reviewed by the DGOJ.

### Registration

27 | If licensing is not required, is there a registration or other process suppliers are subject to, and what triggers that process?

Yes, licensing is required if the process the supplier takes care of is deemed to be part of the defined gambling operator duties. If not, technical systems need to be licensed anyway to meet the approved technical standards.

## LABOUR AND EMPLOYMENT

### Wage and hour rules

28 | Are there particular rules governing hours and wage treatment for casino employees?

There are no particular rules as such. However, there are some collective bargaining agreements applicable to employees of companies engaged in casino and other gambling businesses that are applicable in certain autonomous communities, and special collective agreements applicable to only specific companies that contain provisions that are more favourable for these employees than the general Spanish labour framework.

### Collective labour

29 | Must casino employees be members of labour unions or similar organisations?

No.

## ACQUISITIONS AND CHANGES OF CONTROL

### Change of control

30 | How are licensee changes of control, and substantial changes in shareholdings of licensees, addressed?

At a national level, changes of control are not subject to any prior approval; post-closing notice to the relevant significant shareholders' registry is sufficient.

At a subnational level, some autonomous communities require prior approval in the event of a direct change of control (but not for an indirect change of control at a holding company level). This happens mostly for casino and betting shop operators.

### Bankruptcy

31 | How are gambling licences treated in bankruptcy?

At a national level, bankruptcy is an event of termination of gambling licences. At a subnational level, similar rules apply – in some regions, bankruptcy prevents licences from being renewed.

## QUASI-GAMBLING

### Regulation

32 | How are forms of 'quasi-gambling' regulated? Are any treated as 'gambling', and what triggers such treatment?

There is no specific regulation on these matters. The Directorate-General for Gambling Regulation held public consultations to receive opinions on how issues such as fantasy sports should be regulated, but this has not resulted in any specific regulation to date. According to a literal interpretation of the applicable law, these fantasy sports could be deemed as gambling to the extent that the winner is offered a prize, but there is no case law on the matter, although some unlicensed operators offer fantasy sports online for prizes. Skill games fall within the definition of gambling.

### Licensing

33 | Does your jurisdiction license quasi-gambling operators?

No. Either an activity is deemed as gambling or not, there is no 'quasi-gambling' category.

### Other restrictions

34 | Does your jurisdiction impose other restrictions on the conduct of quasi-gambling activity, including restrictions on advertising, age of participation, limitations on prizes, etc?

No, as there are no quasi-gambling activities recognised under Spanish law.

## LITIGATION

### Recent cases

35 | What, if any, significant litigation involving the gambling or quasi-gambling sectors has your jurisdiction seen in recent years?

The most relevant case of the first quarter of 2021, other than the appeal against the regulations on advertising dismissed by the Spanish Supreme Court, was a judgment on flagrant errors in setting the odds for sports bets.

In this case (No. 137/2021 of 11 March 2021), a player noticed that the odds offered by a sports bets operator were abnormally attractive for bets on the number of goals in a football match and placed 76 bets over four consecutive days (until the erroneous odds were corrected). The player wagered around €650 and won prizes of over €2.5 million. The gambling operator nullified these bets as it considered that there was a flagrant error and the bets should be deemed null and void. The provincial courts ruled that the bets were valid and that the operator had the burden to set the correct odds, and therefore the player was entitled to the full prizes. The Supreme Court reversed this judgment, but did not uphold the operator's argument that the gambling agreement provided that flagrantly incorrect odds would nullify the bet – as this clause was deemed abusive and ineffective – irrespective of whether the probability associated to the odds was clearly a mistake. However, the Supreme Court agreed that the fact that the player did place 76 identical bets showed bad faith by the player and that he was fully aware that the odds were offered by mistake. As a result, the Supreme Court ruled that the bets should be nullified, but not because of the application of the gambling agreement that was deemed to be abusive.



## UPDATE AND TRENDS

### Key developments of the past year

- 36 | Highlight any noteworthy developments or trends in the gambling or quasi-gambling sectors (legal or business) and their potential implications.

Gambling is a public policy issue in Spain, and one that causes political controversy. The ministry in charge of gambling matters (the Ministry of Consumer Affairs) is currently headed by a member of Unidas Podemos, the alliance formed by left-wing parties in the government coalition. The Ministry of Consumer Affairs promised to restrict gambling advertising and the opening of new gambling venues, and this promise was implemented through new gambling advertising regulations.

In addition, the gambling industry was severely impacted by the covid-19 crisis. All land-based gambling was required to temporarily close for business in Spain and online gambling was also affected owing to the lack of sports to bet on.

The above notwithstanding, the industry showed signs of improvement during the second half of 2020, especially online businesses. Land-based gambling is still struggling as covid-19 restrictions (still in force as at April 2021) limit these services being offered.

### Coronavirus

- 37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Unlike other industries, no emergency legislation was introduced to support the gambling industry. However, emergency temporary regulations were approved to restrict the offering of online gambling services, as the government deemed that, during lockdown, the population could be particularly vulnerable to excessive or irresponsible gambling. Gambling operators were encouraged to act with particular care with respect to targeting new clients. Land-based gambling was closed for business in all autonomous communities, although several regions, such as Madrid and Catalonia, have lifted closures. However, one of the main legal characteristics of the covid-19 pandemic in Spain was that regulations changed from week to week and the gambling industry fell victim to the trend of legal uncertainty that still applies as at April 2021. Constant legal checks and updates are required.

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