

Gaming

Contributing editor
Behnam Dayanim



2018

GETTING THE
DEAL THROUGH

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Behnam Dayanim
Paul Hastings LLP

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This article was first published in June 2018
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Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

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No photocopying without a CLA licence.
First published 2018
First edition
ISBN 978-1-78915-118-3

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Introduction	5	Mexico	37
Behnam Dayanim Paul Hastings LLP		Carlos F Portilla Robertson and Iván Guerrero Sánchez Portilla Ruy-Díaz y Aguilar SC	
Australia	6	Nigeria	43
Jamie Nettleton, Karina Chong and Mia Corbett Addisons		Yahaya Maikori, Nnedi Mgbemena and Osayamen Ojo Law Allianz	
Brazil	11	Poland	47
Lucas Tavares Bueno, Rafael Gagliardi and Gabriel da Câmara de Queiroz Demarest Advogados		Piotr Dynowski and Michał Sałajczyk Bird & Bird Szepietowski i wspólnicy sp k	
Czech Republic	16	Spain	53
Vojtěch Chloupek Bird & Bird sro advokátní kancelář		David López Velázquez Uría Menéndez	
Germany	21	Switzerland	58
Michael Stulz-Herrnstadt and Christoph Engelmann DLA Piper		Andreas Glarner, Thomas Linder, Alexandra Körner and Sophie Schmid MME Legal Tax Compliance	
Macao	25	United Kingdom	62
Carlos Eduardo Coelho MdME		Melanie Ellis Harris Hagan	
Malta	30	United States	69
Malcolm Falzon and Terence Cassar Camilleri Preziosi		Behnam Dayanim, Reade Jacob and Edward J George Paul Hastings LLP	

Preface

Gaming 2018

First edition

Getting the Deal Through is delighted to publish the first edition of *Gaming*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

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 **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print and online. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

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.

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 Behnam Dayanim of Paul Hastings LLP, the contributing editor, for his assistance in devising and editing this volume.

GETTING THE 
DEAL THROUGH 

London
June 2018

Spain

David López Velázquez

Uría Menéndez

Introduction

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 applicable autonomous community approval). The state-wide piece of legislation on gambling is Law 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).

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.

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

Eighteen.

4 What are the penalties for offering unlawful gambling?

Penalties are different for state-wide (online gambling) and regional levels. Under the State-wide Gambling Act, the organised performance or advertisement of gambling activities without the required licences is considered a very serious violation. Sanctions for very serious violations comprise fines ranging from €1,000,001 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).

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.

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 powers of the DGOJ 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 (LAE), and

the National Organisation of the Blind in Spain (ONCE) 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.

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

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 LAE and ONCE, a Spanish foundation aimed at supporting people with serious visual impairment and other disabilities.

10 Please describe the licensing criteria 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:

- Casino licences are awarded pursuant to public tender processes.
- 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 the operation authorisation 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, and few 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 to 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.

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.

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 lottery. Bingo halls and betting shops usually offer food and drinks. In turn, casinos are specific-purpose locations (which offer ancillary services as well, such as food, drinks and concerts).

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

No.

14 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

15 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 the 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 Spanish 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 particular 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, C 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 payable annually on 31 December. 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.

Remote gambling

16 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. As of today, 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.

17 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 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: 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.

18 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

Update and trends

There have been no material changes to the regulatory framework since 2011, when the Gambling Act was approved. Focus is now on M&A transactions and restructuring processes involving major Spanish gambling operators.

Other than that, draft regulations to limit advertising of gambling activities are currently under discussion. Some Spanish media outlets are starting to focus on the harm that gambling activities may be causing in lower income areas, where many gambling halls have been opened recently. There is also a public negative perception of the high volume of online gambling advertisements on Spanish TV and radio. As a result of these concerns, the Spanish government is considering restricting gambling advertising to certain hours of the day. These limitations are expected to essentially affect online gambling, as casinos, and bingo and slot machine halls are not usually advertised on TV or radio in Spain. The main purpose of the draft regulations is to restrict the type of messages that may be sent to potential participants (responsible gambling) and the public to which the messages can be directed.

With respect to 'grey areas' such as fantasy sports, the DGOJ has opened a public consultation period to receive opinions on how these issues should be regulated. Unlike other countries, such as the US, fantasy sports are not major businesses in Spain.

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: 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.

19 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.

20 May operators licensed in your jurisdiction offer internet gambling to consumers in other countries?

No.

21 What tax rate applies to each form of remote gambling?

See question 15.

Intellectual property

22 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.

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

Not currently, although some draft regulations restricting advertising are under discussion (see question 24).

Advertising**24 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.

Draft regulations to limit advertising of gambling activities and to review online games' regulations are currently under discussion. The Spanish media is starting to focus on the harm that gambling activities may be causing in lower income areas, where many gambling halls have been opened recently. There is also a public negative perception of the high volume of online gambling advertisements on Spanish TV and radio. As a result of these concerns, the Spanish government is considering restricting advertising to certain hours of the day. These limitations are expected to essentially affect online gambling as casinos, bingo and slot machine halls are not usually advertised on TV or radio in Spain. The main purpose of the draft regulations is to restrict the type of messages that may be sent to potential participants (responsible gambling) and the public at which the messages are directed. In particular, advertising cannot be directed at minors and, for such purposes, TV fixed-odds sports betting advertising will be restricted from 10pm to 6am, with certain exceptions for sports events that are being broadcast.

Suppliers**25 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 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.

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

See question 26.

Casino development**27 What considerations arise in developing a casino resort project that are not typical to other resort development?**

There are no specific requirements or considerations.

Labour and employment**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.

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

No.

Acquisitions and changes 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.

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**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 DGOJ has opened a public consultation period to receive opinions on how issues such as fantasy sports should be regulated. 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.

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33 Does your jurisdiction license quasi-gambling operators?

No. See question 32.

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?

Not applicable.

Litigation

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

There is no significant case law on specific gambling matters in Spain other than the judgments issued by the Court of Justice of the European Union, none of which refers to specific Spanish operators or matters.

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