

Gaming in Switzerland: overview

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A Q&A guide to gaming in Switzerland.

The Q&A provides a high level overview of the legislative framework of gambling regulation; the regulatory authorities; gambling products; land-based gambling; regulation and licensing; online gambling; B2B and B2C operations; mobile gaming and interactive gambling; social gaming; gambling debts; tax; advertising and developments and reform.

To compare answers across multiple jurisdictions, visit the *Gaming Country Q&A Tool*.

This Q&A is part of the *Gaming Global Guide*. The gaming global guide serves as a starting point for understanding the regulatory framework of land-based and online gaming.

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Legislative framework of gambling regulation

Overview

1. What legislation applies to gambling?

Switzerland has a federal legal system, whereby the law is always governed on a national level as well as on a state level (cantons).

The first legislation on gambling formed part of the Swiss Federal Constitution in 1874. Since that date, the industry has been regulated by the Federal Justice and Police Department. In 2000, the Constitution's ban on gambling and Switzerland's land-based casino industry started to flourish.

Subsequently, the Swiss Constitution distinguished between two kinds of gaming (*Article 106, Swiss Federal Constitution*):

- Games offered in casino, governed by the Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) (FGA).
- Other games (such as bets, lotteries and bingos), governed by the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB) (LLB)

Skill games and prize competitions, which are not regulated by the LLB do not fall under these federal laws, but are regulated by cantonal law.

The key objectives of the Swiss gaming legislation are:

- Ensuring transparent and safe gambling operations.
- Tackling organised crime and money laundering in or through gambling operations.
- Preventing socially harmful effects of gambling operations, by allowing gambling only inside casinos.

There is also a federal and cantonal supervisory body called the Swiss Federal Gaming Board (SFGB), which is responsible for monitoring and enforcing the legal provisions on games of chance and casinos, supervising the casinos and investigating violations of the gambling laws and regulations. Acting as an independent public authority board, the SFGB is administratively affiliated to the Federal Department of Justice and Police and directly answerable to the Federal Council, to which it reports once a year. The SFGB began its work at the time that the FGA took effect on 1 April 2000.

The lottery and betting market is supervised by the Intercantonal Betting Board, Comlot under the Intercantonal Agreement on Supervision and Licensing in 2005.

Switzerland's gaming and gambling market has transformed over the last few decades, specifically as a result of the process of deregulation, which began in 1993, where 75% of Swiss voters decided to reintroduce casino gambling after the ban. Since 2000, the casino market has experienced significant change, from small slot halls and illegal card rooms to a well-established industry, which by 2010 encompassed seven large A-type casinos in urban areas and 12 small B-type casinos in resort towns or smaller communities (see *Question 4, Casino games*). Together, these 19 casinos generated gross revenues of nearly CHF900 million in 2010.

The federal government granted two casino licences in June 2011:

- An A-type licence to Swiss Casinos, for a casino to open in Zurich in late 2012.
- A B-type licence to FBAM Neuchatel SA, to open in Neuchatel.

With 21 casinos currently in operation, Switzerland has one of the highest casino densities in the world and the market seems to be saturated.

However, since 2007, the industry has suffered a significant decline. A media release by the Federal Casino Federation in 2015 stated that gross revenues further declined by 33% to CHF681 million.

The lottery and sports betting market, however, was not affected much by the decline. According to the annual reports of Swisslos a Swiss lottery operator, the gross revenues between 2011 and 2015 remained stable at approximately CHF900 million Swiss francs, of which around 9% are allocated to bets.

Definitions of gambling

2. What is the legal definition of gambling in your jurisdiction and what falls within this definition?

General definition

There is no legal definition of gambling in Switzerland. However, the two specific gambling sectors (the casino sector and the lottery and betting sector) are defined in separate legislation.

Games of chance are defined as games that cannot be influenced by any skill factor, such as slot machines, roulette, blackjack, baccarat and poker (*Article 3, Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) (FGA)*) Games of skill are defined as games where the outcome depends to a certain extent on the player's skill, such as chess or the popular Swiss card game "Jass". However, pure games of chance, as well as pure games of skills, are rare.

Games that are dependent on money or other financial benefits are usually a mixture of both luck and skill, and it is not always obvious which of the two factors is dominant. It is crucial to ascertain whether a game is defined as one of chance or one of skill, as cash games of chance outside licensed casinos in Switzerland are illegal but cash games of skill are permitted.

The lottery and betting sector is governed by the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB) (LLB).

Online gambling

Organising online games of chance and any activity, which supports, funds or simply facilitates online gambling is illegal in Switzerland (*Article 5, FGA*). This typically includes online casinos (that is, cash games of chance offered online).

There is no clear definition of online gambling. However, the chain of distribution to the customer is significant in determining whether a game is classified as remote gaming or online gaming.

Depending on the specific circumstances of the individual case, the following activities have been prosecuted or are deemed illegal by the Swiss Federal Gaming Board (SFGB):

- Operating a gaming server.
- Processing certain financial transactions in connection with online gambling.
- Advertising or marketing for online games (also hypertext linking).
- Management or financing of online gambling.

This means that both operators and suppliers can be prosecuted.

The SFGB recently ruled, in an unpublished opinion letter, that it makes a difference whether the online gaming services target Swiss residents or not. The FGA intends to protect gamblers in Switzerland. If Swiss residents could be effectively blocked by technical measures from accessing the online gaming services, supporting activities for remote gambling would be allowed.

However, participating in online games of chance is generally not illegal. According to the prevailing doctrine, the mere accessibility of a foreign online service in Switzerland does not qualify as an activity on Swiss territory and the Swiss gambling prohibition does not apply. Therefore, an individual Swiss player accessing foreign online casinos does not need to fear sanctions.

It is legal for an international online gaming operator to set up corporate headquarters in Switzerland to consolidate its operation. In addition, an international operating online gaming operator can organise all its group internal financial transactions to be undertaken by Swiss banks. In both cases the SFGB decided that these activities do not fall under the territorial ambit of the FGA, if the online gaming attempts of Swiss residents can be blocked from accessing the gambling websites.

Although the provision of internet-based lottery or betting services is principally illegal, the cantons can grant licences. However, to date, only Swisslos and Loterie Romande have obtained the necessary permissions and have developed a wide range of online lottery and sports betting services.

Land-based gambling

There is no definition of land-based gambling in Swiss law.

Regulatory authorities

3. What are the regulatory or governmental bodies that are responsible for supervising gambling?

Organised games of chance, lotteries or bets in Switzerland are subject to governmental permission (that is, a licence, concession) and all gambling operations are supervised and controlled by the following competent authorities:

- The Swiss Federal Gaming Board (SFGB) is an independent public authority board, which is administratively affiliated to the Federal Department of Justice and Police. Since April 2000, the SFGB has acted as the authority for casinos and supervises their compliance with the Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) (FGA) and other applicable

regulations. In addition, the SFGB is in charge of deciding whether a game should be qualified as a game of skill or as a game of chance and therefore subject to the FGA. Casino licences are issued by the Federal Counsel, which also determines the number of licences that may be issued and their duration.

- The Swiss Lottery and Betting Board, Comlot, was established by the cantons in 2006 and is the licensing and supervising body for lotteries and betting in Switzerland. Comlot evaluates the licence applications of lottery operators and supervises compliance with laws, regulations and licensing requirements. Lottery operators can appeal decisions of Comlot at the Appeals Commission. Each canton can prohibit certain lottery products on its territory, even if they have previously been acknowledged by Comlot. The enforcement of the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB) (LLB) is subject to the cantons and particularly to Comlot.
- Cantonal governments and their appointed departments can enforce the rule of law within their territories. Therefore, despite the prohibition of betting under the LLB, cantonal law may provide for exceptions for its own territory. Any offering of commercial bets (such as commercial selling and accepting of totalisator bets on sport) is subject to a cantonal permission (*Article 34, LLB*). Comlot can also assign these permits.

See box, *The regulatory authorities*.

Gambling products

4. What gambling products have been specifically identified by legislation, and what different requirements have been established for each?

The Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) (FGA), the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB) (LLB) and the Executive Ordinances to the FGA (SR 935.521) and the LLB (SR 935.511) regulate the following gambling products:

- Lotteries.
- Betting.
- Lottery-like games.
- Casinos.
- Poker.
- Gaming machines.
- Online gambling.

Skill games and prize competitions such as tombolas are subject to cantonal law.

Lotteries

Lotteries are defined as events where players must pay money in advance to participate in a game and winners are chosen by the drawing of lots (*Article 1, paragraph 2 II, LLB*). Therefore, lotteries can be qualified as a game of chance.

Although the lottery market is regulated by the LLB, the implementation of the LLB is subject to cantonal law.

Lotteries of any kind and lottery-like undertakings such as snowball, hydra, gella, multiplex, house draws, auctions as lottery-like events and internet-based lotteries, are generally prohibited (*Article 1, LLB*). Lotteries serving not-for-profit or charitable purposes are exempt from the prohibition, provided they are permitted by cantonal law. These exceptions (in the form of licences) can only be issued to corporations and public-law institutions, as well as associations of individuals and foundations, under private law, and all must have their primary address in Switzerland. The licences are not transferable to any third party. There is currently a lottery duopoly as, to date, licences have only been granted to Swisslos and Loterie Romande.

Previously, all cantons had their own licensing authorities, distribution offices (for the net profits) and representations within their lottery organisations. However in 2005, the Intercantonal Agreement on Supervision and Licensing in 2005 harmonised this separation of powers by establishing the Swiss Lottery and Betting Board (Comlot) to supervise the Swiss lottery and betting market.

Betting

Bets are defined in the Swiss Code of Obligation and are governed by the LLB. It is illegal to commercially offer, sell and accept bets on horse races, boat races, football matches and similar events. The prohibition also includes the marketing and advertising of bets in oral or written form, (that is, by announcements, billboards, newspaper articles, letters or any other means).

However, the Swiss law does not make clear what exactly the term 'commercial' means. In practice, betting will only be authorised if it is not aimed at making a profit. Therefore, offering, acting as an agent for and entering into bets on sporting events without any commercial aim is permitted, provided that the event is limited (as to duration and people).

Sports betting

The professional provision of sports betting is generally prohibited (*LLB*). The only exception is based on cantonal law for the provision of betting services with a totalisator (*pari-mutuel*) at local live sports events with a special licence. In addition, individual cantons have assigned betting licences to two cantonal organisations, Swisslos and Loterie Romande.

Lottery-like games

Lottery-like games are a new genre of gambling. Due to the variety of terms for these games, an exact definition is not possible. Lottery-like games include pyramid systems, gift circles and contests or competitions, which either (*Article 43, LLB*):

- Require the payment of a fee.
- Are subject to an obligation to purchase and the purchase or extent of winnings depend significantly on chance or on circumstances unknown to participants.

Lottery-like games are generally prohibited (*see above, Lotteries*.) In addition, pyramid systems are illegal under Article 3, section r of the Federal Act against Unfair Competition (SR 241) and are subject to the jurisdiction of the State Secretariat for Economic Affairs.

Casino games

All games (such as, blackjack and roulette) offered in a land-based casino fall under the federal jurisdiction. The Swiss Federal Gaming Board (SFGB) determines which games of chance can be offered by the casinos, as well as the maximum stake that can be set. In addition, the licensed casinos must prepare and implement a social plan, including measures to avoid gambling addiction.

The FGA differentiates between two different types of casino, based on the types of games of chance to be offered, the winnings and the maximum number of slot machines. A-type casinos are casinos with no limits in stake, which can offer 14 different table games, with unlimited stakes, jackpots and maximum winnings at all slot machines. An A-type casino is only allowed in an area with a population of at least one million people. B-type casinos are usually spa or resort casinos, with a maximum of three kinds of table games and limited stakes, jackpots and maximum winnings at all slot machines. The maximum number of gambling tables operated per casino is three and for slot machines the maximum is 250. The limit per stake in B-type casinos is CHF25 and the maximum jackpot offered is CHF25,000.

Poker

Poker cash games can only be permitted and played in licensed casinos (*Article 4, FGA*).

Poker cash games were briefly permitted by SFGB, provided that they were not prohibited by cantonal law. However, on 20 May 2010, the Supreme Court of Switzerland classified Texas Hold'em poker as a game of chance and therefore held that these games could no longer be organised outside licensed casinos. In addition, on 2 June 2010, the SFGB prohibited the organisation of poker tournaments outside casinos.

Gaming machines

Gaming machines that involve a predominant element of skill can be operated outside casinos, if permitted by cantonal law (*Article 106, paragraph 4, Federal Constitution of the Swiss Confederation (SFC)*). Cantonal permission can only be granted if the gaming machine has been approved by the SFGB as skill-based.

However if gaming machines involve a predominant element of chance, they must only be operated in licensed casinos (*Article 3, paragraph 4, FGA*).

Gaming machines and slot machines

There are two main categories of slot machines:

- Gaming machines, which have entertainment as their sole purpose (such as table football, pinball and any kind of sports simulators).

- Slot machines, which give the player an opportunity to win money or other prizes of monetary value (such as, points, chips or goods).

The second category is governed by the same rules as casinos (see above, *Casino games*). The casino can adopt rules for its slot machines and submit them to the SFGB for approval. The rules need to be summarised in plain language, placed on the table game area or on each slot machine and released on demand.

Terminal-based gaming

Terminal-based gaming, which involves games of skill, is permitted under the same rules as gaming machines and slot machines (see above, *Gaming machines and slot machines*). Terminal-based gaming that involves games of chance and lotteries is prohibited.

Bingo

Bingo is governed by the LLB. Bingo events in Switzerland are only permitted on a small scale and with a licence from the relevant cantonal authority.

Land-based gambling

Regulation/licensing

5. What is the licensing regime (if any) for land-based gambling?

Available licences

Casino licences. There are two types of casino location licences (see *Question 4, Casino games*), which can only be granted if the appropriate canton and local community support the application. Therefore, the applicant in a report must outline the economic benefit of the planned casino for the region.

In addition to the location licence, a casino also requires a operation licence, which is granted by the federal government and issued by the Swiss Federal Gaming Board (SFGB). The usual term of an operation casino licence is 20 years, though, in certain cases, the federal government can set a shorter or longer term.

The lottery market. The lottery market is regulated by the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB) (LLB). However, the implementation of the LLB is subject to cantonal law. Lotteries of any kind, as well as lottery-like undertakings, auctions as lottery-like events and internet-based lotteries, are generally prohibited (*Article 1, LLB*). Cantonal law can also permit, limit or prohibit these kinds of non-profit-making activities.

Eligibility

Licences for land-based gambling can only be granted in the following circumstances:

- If issued either:
 - to legal entities under public law and to joint stock companies organised in accordance with Swiss law whose share capital is split into registered shares, provided that the members of these companies' administrative boards have their primary residence in Switzerland; or
 - to co-operatives organised in accordance with Swiss law, if their members have their primary residence in Switzerland.
- If the applicant and its most important business partners, as well as its beneficial owners and the shareholders, have sufficient capital, a good reputation and guarantee a proper business.

Operating licences can only be granted if the applicant guarantees the independence of the management and supervision of the gaming operation.

Permissions in the form of licences can only be issued to corporations and public-law institutions, as well as associations of individuals and foundations, under private law, and all must have their primary address in Switzerland (*Article 6, LLB*). The licences are not transferable to any third party. In Switzerland there is currently a lottery duopoly as only Swisslos and Loterie Romande have a licence.

Application procedure

The written application for casino licences must be submitted to the Swiss Federal Council. Applicants must present a social plan, including strict security concepts and measures to prevent gambling addiction. The SFGB will review the applications and issue a recommendation to the Swiss Federal Council (SFC). The application will be released to the public, which will be invited to comment on the planned casino. The SFC will make the final decision. Casinos can be operated only after the licence has been granted by the federal government and issued by the SFGB.

Duration of licence and cost

A casino licence will usually be granted for a period of 20 years (*Article 17, Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA)*). After the 20-year period has lapsed, the licence can be extended or renewed. In certain circumstances the licence may be revoked, restricted or suspended. A revocation of the licence is possible if any of the following apply:

- The requirements for issuing the licence are no longer fulfilled.
- The licensee has obtained the licence based on incomplete or false information.
- The licensee has not started operations within the set time limit by the SFGB.
- The licensee leaves the business inoperative.
- The licence is used for any unlawful or improper purposes.

Licensed/permitted lottery play (not large-scale events) must be performed within two or three years respectively (three if drawn in several series). However, the granting authority can extend the period for an additional year. In addition, the licence/permit can be revoked if the holder of the licence/permit does not fulfil the conditions imposed or if they contravene the legislative or ordinance provisions.

6. What are the limitations or requirements imposed on land-based gambling operators?

Prohibitions

The following persons are subject to a general ban on land-based gambling (*Article 21, paragraph 1, Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA)*):

- Persons under 18 years.
- Persons who are suspended from casinos.
- Board members or members of the Swiss Federal Gaming Board (SFGB).
- Casino employees who are involved in the daily business.
- Representatives of companies that manufacture or deal in gaming facilities.
- Representatives of casinos.

Casino employees who are not involved in the daily business, shareholders holding more than 5% of the share capital of the casino and corporates are excluded from the above. However, a casino can refuse access to persons without giving any reason.

Restrictions

One of the main objections of deregulation of the casino market was the assumption that it would result in an increase in gambling addiction. Therefore, applicants must present a social responsibility plan, including measures to prevent gambling addictions.

Players, who are insolvent, fail to meet their financial obligations, gamble money that is disproportionate to their income or assets or negatively impact the operation of the casino must be banned from casino gaming operations. An assumption of a player's income and assets is sufficient, as long as it is based on the casino's own perception or the reports of a third party. However, the casino cannot instigate investigations into a player's financial circumstances. In addition, the player can also apply for a ban.

The casino must register the banned players and notify all of the other casinos in Switzerland. However, the ban must be cancelled as soon as the reason for it has ceased.

The prevention of gambling addiction was one of the main goals of the Intercantonal Agreement on Supervision and Licensing 2005. In particular, it includes regulations, such as the obligation to carry out a social responsibility plan before applying for a licence.

Anti-money laundering legislation

Casinos are subject to the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector (AMLA) and are considered as financial intermediaries. The SFGB has issued an ordinance to clarify the application of the AMLA for casinos. In addition, the majority of the licensed casinos are members of the Self-Regulating Organisation, which sets the AML standards for its members.

Financial intermediaries under the AMLA must comply with different duties of due diligence. For example, casinos must verify the identity of the customer on the basis of an identification document in one of the following situations:

- When they enter the casino.
- When they reach a certain threshold.
- When they establish a certain business relationship (accounts or depots).

In addition, casinos must report any suspicion of money laundering immediately and respect the criminal provisions of the AMLA. A violation of provisions of the AMLA may lead to a revocation of the casino licence. Lottery companies are not yet considered as financial intermediaries.

Online gambling

Regulation/licensing

7. What is the licensing regime (if any) for online gambling?

Available licences

As remote gambling and remote lotteries are illegal in Switzerland, there is no licensing framework (aside from cantonal law) (see *Question 2, Online gambling*).

As Switzerland is not part of the EU, there are no direct regulatory issues regarding compatibility with EU law. However, legislators may raise the issue as to what extent EU licensed operations might be accepted in Switzerland during the drafting of the new legislation (see *Question 17*).

Eligibility

See above, *Available licences*.

Application procedure

See above, *Available licences*.

Duration of licence and cost

See above, *Available licences*.

8. What are the limitations or requirements imposed on online gambling operators?

Prohibitions

See *Question 7, Available licences*.

Online cash games of chance are punishable by a fine of up to CHF1 million if the illegal act was performed intentionally and in more serious cases, imprisonment of up to five years and a fine of up to CHF2 million (*Article 56, Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) (FGA)*). In addition, the freezing of illegal asset allocation and the seizure of any materials and documents involved can also be carried out by the police.

There have been very few enforcement decisions under the FGA. To the best of the authors' knowledge, there have been no investigations against offshore/foreign companies providing online gaming to Swiss users from abroad under the FGA. The same applies to their representatives or local partners. However, the Federal Gaming Board sanctioned the linking to gambling providers with a fine of

CHF2,000 on 6 December 2007.

Illegal betting activities can be punished with a monetary penalty of up to a daily rate of CHF90 or a fine of up to CHF10,000. All assets relating to the criminal activity can be confiscated. As the Intercantonal Betting Board, Comlot is not authorised to prosecute as the prosecution and violation of the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB) is subject to the cantonal authorities. However, Comlot will report to the criminal prosecutor, anyone who operates or advertises illegal lottery or betting activities in Switzerland. Legal advice from Comlot does not bind the cantonal authorities.

Restrictions

See *Question 7, Available licences*.

Anti-money laundering legislation

See *Question 7, Available licences*.

B2B and B2C

9. Is there a distinction between the law applicable between B2B operations and B2C operations in online gambling?

Depending on the specific circumstances of the individual case, the following activities have been prosecuted or are deemed illegal by the Swiss Federal Gaming Board:

- Operating a gaming server.
- Processing certain financial transactions in connection with online gambling.
- Advertising or marketing for online games (also hypertext linking).
- Management and/or financing of online gambling.

This means that both operators as well as suppliers can be prosecuted.

As online gaming is illegal in Switzerland, there are no licences, concessions or approvals for any online gambling operators available at this point in time.

Technical measures

10. What technical measures are in place (if any) to protect consumers from unlicensed operators, such as ISP blocking and payment blocking?

There are currently no regulated technical measures (such as payment or ISP restrictions) in place to protect consumers from unlicensed gaming operators.

Mobile gambling and interactive gambling

11. What differences (if any) are there between the regulation of mobile gambling and interactive gambling on television?

Switzerland does not have any special rules for mobile gambling and interactive gambling on television. To the extent that gambling qualifies as remote access games within the meaning of the Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) or the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB), the provision of these services is illegal.

Social gaming

12. How is social gaming regulated in your jurisdiction?

Switzerland does not have a special regulatory regime for social gaming. Instead, a case-by-case approach is used to decide whether a specific service qualifies as a lottery, bet or casino game under the Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) or the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB).

Provided that social games are free and/or there is no monetary advantage to be won, it will not require a licence. This is likely to apply if the participants can purchase gaming credits but cannot gain any monetary advantage. However, if the participant purchases credits and can gain a monetary profit (such as, money or credits that may be exchanged for cash, prizes or further gaming activities that are otherwise only accessible after payment), it is likely that the service will be illegal.

Gambling debts

13. Are gambling debts enforceable in your jurisdiction?

Generally under Swiss law, gambling and betting debts do not give rise to a claim (*Article 513, Code of Obligations (SR 220)*).

Lotteries and prize draws can give rise to a claim, but only where they have been approved by the competent authority. In the absence of approval, the claim is treated as a gambling claim and is unenforceable. Lotteries or draws authorised abroad do not enjoy legal protection in Switzerland unless the competent Swiss authority has authorised the sale of tickets (*Article 515, Code of Obligations*).

Games of chance in casinos give rise to claims where they take place in a casino licensed by the competent authority (*Article 515a, Code of Obligations*).

Tax

14. What are the applicable tax regimes for land-based and online gambling?

The tax regime for the casino sector must be treated separately to that of the lottery and betting sector.

Land-based gambling

Casinos. For the players, casino winnings are free of individual taxes. However, in accordance with the Swiss Constitution, casinos are subject to tax based on their gross revenues. The tax rate can vary from between 40% and 80% of gross revenues, but casinos can request a reduction in the rate in the case of exceptional economic conditions. Generally, casinos pay 40% tax on gross revenues up to CHF10 million. If gross revenues exceed this sum, the tax rate rises by 0.5% for every million Swiss francs. The federal government can change the current level of taxation rates up to 80%.

Lotteries. Lottery and betting winnings are generally considered to be taxable income of the players. Betting and lottery winnings of more than CHF1,000 are subject to a 35% withholding tax at the federal level if the gambling activity is performed in Switzerland. The withholding tax amount is subtracted automatically when the betting or lottery winnings are paid out. However, it can then be reclaimed by the player if the winnings are declared as taxable income on their individual tax return. The winnings are subject to individual tax on both the federal and cantonal level. For federal tax, there is a tax-free amount of CHF1,000. In addition, 5% of winnings (up to a maximum of CHF5,000) can be deducted as lump-sum stake cost. Depending on the canton, different tax-free amounts and deductions may apply. Applicable tax rates vary substantially depending on total income and residence.

In addition, the organisers of grand lotteries (such as Swisslos and Loterie Romande) must pay a duty of 0.5% of their gross revenues to the cantons for the prevention of and fight against gambling addiction (*Article 18, Intercantonal Agreement on Supervision and Licensing in 2005*).

Online gambling

See above, *Land-based gambling*. Foreign gambling providers are generally not subject to tax if no permanent establishment is constituted in Switzerland. In addition, no withholding tax is due on betting and lottery winnings paid out by foreign providers.

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

Any advertisement for the commercial offering of games of chance with regard to licensed land-based casinos is prohibited if made in an obtrusive way (*Article 33, Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA)*). With regard to unlicensed casinos or foreign online operators, marketing measures are generally considered illegal.

Any promotion for bets within Switzerland's borders for betting or lottery services that are not licensed by the Swiss authorities is prohibited (*Article 3, paragraph 2, Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB)*). If any person or company carries out promotion activity in Switzerland, Comlot would, if notified, open an investigation against them. Any illegal promotion, including the transport and distribution of promotional material in Switzerland, can be sanctioned with up to a three-month prison sentence and a fine of up to CHF10,000.

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

Since *Article 33, Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA)* entered into force in 1998, there have not been any major regulatory developments related to land-based casino gaming.

Online gambling

Although there are still concerns regarding online gaming operations (particularly relating to the protection of gamblers, data protection and money laundering), the Swiss Government stated in a press release of the Federal Department of Justice on 22 April 2009, that banning online gambling is not the appropriate way to tackle these concerns. As consumers have always been free to visit gambling websites from non-Swiss operators, unlicensed, untaxed and uncontrolled foreign operators have established a strong presence in the Swiss market. This has made the Swiss online gambling ban untenable in the long run. Accordingly, the Swiss Federal Council announced in early 2013 that it would present a first draft of a new gaming law.

Other

Not applicable.

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?

On 30 April 2014, the Swiss Federal Council published a draft of a revised gambling law, the Money Gaming Act, for consultation. The Act will not enter into force before 2019. One of the key changes is that it abolishes the current framework, which regulates casino games and bets/lotteries under separate legislation and consolidates them into a single federal law, the Money Gaming Act.

In addition, the Money Gaming Act proposes to replace the current online gambling ban with a system that allows online gambling based on a concession. However, only a holder of a licence for a land-based casino (type A and B) qualifies to apply for an online licence and can therefore extend its existing land-based services to online services too.

Foreign online gambling providers can enter into an early strategic alliance with a Swiss casino to enter the Swiss market. However, the foreign operator must prove that it has "a good reputation" to be approved by the Swiss authorities. The threshold to be met is currently unclear. In particular, it is unclear whether the authorities will request that the international operator must never have provided services into Switzerland or that it commences blocking its services for Swiss users.

Online gaming, however, must only be offered to Swiss residents. Illegal (not licensed) offers must be reduced more effectively through appropriate technical measures (and not financial blocking measures). In particular, the Federal Council intends to technically block access to foreign online gaming providers if their services have not been licensed in Switzerland. Firstly, the technical blocking measures must be implemented via IP-address blocking conducted by internet service providers, who must block access to foreign providers that

are blacklisted. Only a few critics have rejected the proposed technical blocking measures. However, an intense discussion in parliament is expected. To date only measures to fight child pornography on the internet have been implemented. It seems more than questionable whether restricting an individual from freely accessing the internet is an adequate and proportionate measure to prevent unlicensed gambling services. However, gaming on platforms of unlicensed gaming providers will still be legal.

Under the proposed Act it will be possible to organise small poker tournaments outside casinos under tight conditions (such as with a limited amount of participants, limited buy-in and no risk from the operator) that have not yet been defined. The draft Money Gaming Act also provides for a tax exemption for all gains resulting from money gambling and introduces new guidelines for the charitable use of incomes from lotteries and sports betting services. The revision aims to strengthen player protection by different measures, such as play suspensions, offer of treatment and advice against gambling addiction. In addition, a number of provisions are in place to ensure secure and transparent gaming operations (for example, measures against the manipulation of sports competition).

The regulatory authorities

Federal Gaming Board (FGB)

W www.esbk.admin.ch/esbk/en/home.html

Description. The FGB monitors compliance with the legal provisions on games of chance and casinos and is tasked with enforcing these provisions. Acting as an independent public authority board, the FGB is administratively affiliated to the Federal Department of Justice and Police. The FGB is directly answerable to the Federal Council, to which it reports once a year.

The FGB began its work at the time the Gambling Act took effect on 1 April 2000.

Comlot

W www.comlot.ch/en

Description. Since its creation in 2006, the Swiss Lottery and Betting Board, Comlot, has regulated and overseen the lottery and betting market to ensure that residents of Switzerland can participate safely in lotteries and sports bets.

Online resources

Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA)

W www.admin.ch/opc/de/classified-compilation/20000269/index.html

Description: Official federal website. The legal text is only available in German, French and Italian.

Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; LLB)

W www.admin.ch/opc/de/classified-compilation/19230017/index.html

Description: Official federal website. The legal text is only available in German, French and Italian.

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- Swiss Bar Association (SAV).
- Zurich Bar Association (ZAV).
- Zug Bar Association (ZGAV).
- International Masters of Gaming Law (IMGL).
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- Specialised unit of the self-regulatory organisation of the Swiss Casino Association.
- Member of the disciplinary committee of the self-regulating organisation of the Swiss Bar and Swiss Notary Association (SRO SAV/SNV).
- Member of the Digital Finance Association (DFCA).

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