

Switzerland



Andreas Glarner



Luka Müller-Studer

MME Partners

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in Switzerland?

Swiss law has a federal and a cantonal supervisory body:

- The Swiss Federal Gaming Board (SFGB) supervises cash gambling games of luck (casino games). The SFGB acts as an independent public authority board, which is part of the Federal Department of Justice and Police. The SFGB has regulatory oversight over casinos and supervises their compliance with the Federal Act on Games of Chance and Casinos of 18 December 1998 (SR 935.52; FGA) and other applicable regulations. Furthermore, the SFGB is in charge of deciding whether a game shall be qualified as a game of chance or as a game of skill and, thus, shall be subject to the FGA. Casino licences, on the other hand, are issued by the Swiss Federal Council, which also determines the number of licences that may be issued and their period of validity.
- Betting and lotteries pursuant to the Federal Act on Lotteries and Commercial Betting of 8 June 1923 (SR 935.51; SLA) are under the supervision of the cantons, which for their part assigned this task to the Intercantonal Lottery and Betting Board (Comlot). Comlot was established by the cantons in 2006 and is the global licensing and supervising body for lotteries and betting in Switzerland. Comlot evaluates the licence applications of lottery and betting operators and supervises compliance with laws, regulations, licensing requirements and the like. The intercantonal Appeals Commission is in charge of guaranteeing appropriate legal protection and serves as the judicial authority where lottery operators may appeal a decision of Comlot. Nevertheless, each canton retains the right to prohibit certain lottery products on its territory even if such games had previously been allowed by Comlot.

1.2 Specify all legislation which impacts upon any gambling activity (including skill and social games), and specify in broad terms whether it permits or prohibits gambling.

In Switzerland, games of luck are governed by article 106 of the Federal Constitution. Article 106 of the Federal Constitution distinguishes between two kinds of gaming, i.e. casino gambling and betting/lotteries.

The FGA is the main federal legal basis for the assessment of any cash gambling games of luck (casino games) in Switzerland. Any other games such as lotteries and betting are governed by the SLA. Any question regarding online gambling, sports betting and any

services provided to betting operators or facilitating betting has to be assessed under these laws.

In Switzerland, casino games such as poker, black jack or roulette are qualified as cash games of luck and are governed by the FGA. While organising or offering cash games of luck within licensed terrestrial casinos is legal, the organisation or operation of online (remote) games of luck (e.g. online casinos) is always illegal. Thus, no licences may be obtained to provide online operating services in Switzerland.

Lotteries, bets (incl. sports betting) and bingo (as well as lottery-like and lottery-related activities) are governed by the SLA. Art. 33 SLA generally prohibits the professional provision of betting services related to sports events. Exceptions only apply based on cantonal law for the provision of betting services with a totalizator (pari-mutuel) at local live sports events with a special licence. Not taking into consideration this exception, regulatory prohibitions exist to provide sports betting services in Switzerland.

Nevertheless, individual cantons have assigned betting-permits/licences to providers.

Such licences have only been granted to two (cantonal) organisations (Swisslos and Loterie Romande, which collaborate with Paris Mutuel Urbain). Thus, effectively there exists a sports betting duopoly in Switzerland. The same applies to online betting: while the provision of such services is principally illegal, the cantons (i.e. Comlot) did grant licences. However, as of today, only Swisslos and Loterie Romande have obtained such licence for sports betting services. Apart from that, internet-based lottery and betting services are illegal in Switzerland.

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Casino licences may be issued 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 (article 11 FGA). Moreover, licences may also be issued to co-operatives organised in accordance with Swiss law if their members have their primary residence in Switzerland. Further, a licence may only be granted 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.

Lottery permissions in the form of licences may 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 SLA).

2.2 Who or what entity must apply for a licence and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Swiss law distinguishes between two kinds of casino licences:

- **Licences for casino location:** Licences for casino locations may only be granted if the appropriate canton and local community support the application and if the applicant provided evidence for the economic benefit of the planned casino for the region (article 13(1) FGA).
- **Operation licences:** Operation licences may only be granted if the applicant (i) guarantees the independence of the management and supervision of the gaming operation, (ii) presents a security (AML, fraud management) and social security (player protection) concept, and (iii) presents a business continuity plan. Casinos can be operated only after the licence has been granted by the federal government and issued by the SFGB (article 13(2) FGA).

The holder of the casino location licence and the holder of the operation licence do not necessarily need to be the same legal entity/person. However, if the licence holders are not identical, a written agreement, approved by the SFGB, covering all rights and duties between these two parties is required.

Lottery law legislation does not distinguish between local and operational licences (for licensing requirements see question 2.1 above).

2.3 What restrictions are placed upon any licensee?

Licensees may only provide lottery/betting or casino services within the scope of (i) the licence obtained, and (ii) the applicable regulations.

With regard to casino licences, a wide range of detailed restrictions apply with regard to the casino games that may be offered, how these games must be organised, what form and in which amounts payments may be accepted, and how the problem gambling concept and the security and AML procedures are organised. If the licensee fails to comply with the applicable regulations, the SFGB may cancel or impose restrictions on the licence.

With regard to cantonal lotteries, the restrictions placed upon a licensee are subject to cantonal legislations and may vary throughout Switzerland.

Under Swiss law, lottery and casino licences are not transferable to any third party. Any legal transaction involving the transfer of a lottery or casino licence is null and void.

2.4 What is the process of applying for a gambling licence?

The written application for *casino* licences must be submitted to the Swiss Federal Council. The SFGB reviews the applications and issues a recommendation to the Swiss Federal Council. The application will be released to the public, which will be invited to comment on the planned casino. Finally, the Swiss Federal Council decides on whether the licence shall be granted or not; this decision is final. With granting the licence, the Swiss Federal Council imposes the obligation to the licensee to comply with all provisions of the FGA.

Generally, *lotteries* and *betting* are prohibited pursuant to Swiss law. However, by way of exception, cantonal law may allow raffles and lotteries organised for the purpose of public utility, as well as betting on sporting events held within the cantonal territory. In order to fall within the exceptions provided by cantonal law, the applicant must submit his application to the competent cantonal authority (article 5 SLA). However, as these licences are granted pursuant to cantonal law, cantonal legislation may provide for additional requirements to be met.

For large-scale lottery events, a Comlot licence is required: in Switzerland, only Swisslos (for the German-speaking part and Ticino) and Loterie Romande (for the French-speaking part) are licensed to provide intercantonal lottery and sports betting services.

2.5 Please give a summary of applicable time limits and revocation.

A *casino* licence will usually be granted for a period of 20 years (article 17 FGA). After the 20-year period has lapsed, the licence may be extended or renewed. Under certain circumstances the licence may be revoked, restricted or suspended. A revocation of the licence is possible if the requirements for issuing the licence are no longer fulfilled or if the licensee has obtained the licence based on incomplete or false information; it may also be revoked if the licensee has not started operations within the set time limit by the SFGB or if the licensee leaves the business inoperative. Furthermore, the licence may be revoked if the licence is used for any unlawful or improper purposes.

The 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 may extend the period for an additional year. Furthermore, a revocation of the licence/permit is possible if the holder of the licence/permit does not fulfil the conditions imposed or if he contravenes the legislative or ordinance provisions.

2.6 By product, what are the key limits on providing services to customers?

The FGA differentiates between two different types of casinos in terms of the possible types of games of chance to be offered, the winnings and the maximum number of slot machines (A-type and B-type casinos):

- A-type casinos are casinos with no limits in stake and may 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. The number of slot machines is limited to 250. While for the A-type casinos there are no limitations as per the maximum stake, the limit per stake in B-type casinos is CHF 25 and the maximum jackpot offered is CHF 25,000.

Large-scale Lotteries: Currently, large-scale lotteries (e.g. lotteries that are not considered to be small-scale as defined below) may, *de facto* and due to the existing intercantonal conventions, only be provided by Swisslos and Loterie Romande.

Raffles and Small-scale Lotteries: Annual contingents of small-scale lotteries are allocated to individual cantons. According to the Swiss Intercantonal Agreement on the Joint Running of Lotteries, the planned or expected annual amount of such lotteries may not

exceed CHF 1.50 *per capita* of the respective cantonal population. In French-speaking cantons, the 9th Convention on the Loterie Romande C-LoRo defines a lottery as a small-scale event if its planned or expected amount is less than CHF 100,000.

2.7 What are the tax and other compulsory levies?

The tax systems for the casino sector and the lottery and betting sector are different:

In accordance with the Swiss constitution, casinos' gross revenues are taxed. The collected tax funds flow into Switzerland's pension system. The tax rate may vary from 40% to 80% of gross revenues, but casinos may request a reduction in the rate in case of exceptional economic conditions.

Type-A casinos pay 40% tax on gross revenues up to CHF 10 million. If gross revenues exceed this sum, the tax rate rises by 0.5% per million Swiss francs. Type-B casinos pay 40% tax on gross revenues up to CHF 10 million. If gross revenues exceed this sum, the tax rate rises by 1% per million Swiss francs. The federal government is, however, free to change the current level of taxation and set taxation rates of up to 80%.

As lottery and betting winnings in most cantons are considered as income, such winnings are not tax free. Betting and lottery winnings of CHF 50 or more are taxed at 35% (withholding tax) in every canton of Switzerland. The tax amount is subtracted automatically when the betting or lottery winnings are claimed/paid out; the tax amount may then be reclaimed by the player on his or her tax return.

According to article 18 IKA, the organisers of large-scale lotteries, i.e. Swisslos and Loterie Romande, must pay taxes at the rate of 0.5% of their total gross revenues. The cantons, on the other hand, must use these tax proceeds for the prevention of and fight against gambling addiction.

Casino winnings are tax-exempt; this is not so for lottery and betting winnings. However, it is planned to also exempt lottery and betting winnings (see question 5.1).

2.8 What are the broad social responsibility requirements?

One of the main objections to the deregulation of the casino market is the assumption that deregulation would result in an increase in gambling addiction. Therefore, applicants must present a problem gambling policy, including measures to prevent gambling addiction and strict security policies.

One measure is the general ban on casino gambling, which applies to the following persons:

- persons under the age of 18;
- persons who have been suspended by casinos;
- board members or members of the SFGB;
- casino employees who are involved in the daily business;
- representatives of companies that manufacture or deal in gaming facilities; and
- 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 corporate members are also subject to exclusion. Furthermore, casinos may refuse access to persons without the need to indicate any reason.

Furthermore, players who are insolvent or fail to meet their financial obligations must be blocked from casino gaming operations. The same holds true for players who risk wagers that

are disproportionate compared to their income or their assets, as well as players who negatively affect the operation of a casino. A clear understanding of a player's income or assets is not necessary to block a player; an assumption is sufficient so long as it is based on the casino's own perception or on the basis of reports of third parties. However, the casino itself is not allowed to investigate a player's financial circumstances. Moreover, the player himself may also apply for a self-blockage. The casino must register the blocked players and notify all of the other casinos in Switzerland. However, the blockage must be cancelled as soon as the reason for the blockage has ceased to exist. Finally, the casinos are neither allowed to grant loans nor advances to players.

The same applies to the lottery market: in short, the social protection regulations and conditions of accreditation fall into the following categories of effective prevention of problem gambling and gambling addiction:

- information on gambling addiction and responsible gambling;
- early diagnosis of at-risk individuals;
- staff training and awareness-raising (organisers and sales-outlets);
- product concepts and designs that mitigate risk;
- restrictions in terms of age, access, stakes; imposition of bans; and
- supervision of the implementation and impact of social protection regulations.

2.9 How do any AML financial services regulations or payment restrictions restrict or impact on entities supplying gambling?

AML regulations restrict or impact on casinos as follows: casinos are subject to the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector (Anti-Money Laundering Act, 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 (SRO) which sets the AML standards for its members. Financial intermediaries have to comply with different duties of due diligence. For example, casinos must verify the identity of the customer on the basis of an identification document when either entering into the casino, or when reaching a certain threshold or when establishing a certain business relationship (accounts or depots). Furthermore, casinos have a duty to report any suspicion of money laundering immediately. Further, casinos have to respect the criminal provisions of the AMLA. In addition, a violation of provisions of the AMLA (e.g. if money is being laundered in the casino) may lead to a revocation of the casino licence.

Lottery companies are not yet considered as financial intermediaries.

3 The Restrictions on Online Supply/Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Organising online games of chance is illegal (Article 5 FGA). Moreover, each and every activity, which supports funds or simply facilitates online gambling, is illegal. The prohibition in Article 5 FGA typically includes online casinos, i.e. cash games of chance

offered online. Depending on the specific circumstances of the individual case, the following activities have been prosecuted or are deemed illegal by the SFGB:

- operation of a gaming server;
- processing certain financial transactions in connection with online gambling;
- advertising or marketing for online games (also hypertext linking); and
- management and/or financing of online gambling.

This means that both operators as well as suppliers may be prosecuted. However, participation in online games of chance is not illegal. Thus Swiss players do not need to fear sanctions. Furthermore, and according to prevailing legal 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. Finally, but subject to certain restrictions to be assessed in each individual case, it is legal for an international online gaming operator to set up its corporate headquarters in Switzerland to consolidate its operations and/or to organise all its group internal financial transactions to be undertaken by Swiss banks.

Also, internet-based lottery and betting services are illegal in Switzerland. This means that effectively no online licences may be obtained.

3.2 What other restrictions have an impact on online supplies?

As mentioned under question 3.1, online gaming and online lottery and betting are generally not allowed under Swiss law. Accordingly, there are no restrictions which may have an impact on online supplies. There are currently no payment or ISP restrictions in place regarding foreign-based online gaming operators.

3.3 What terminal/machine-based gaming is permitted and where?

Basically, there are two main categories of slot machines: first, gaming machines, which have the sole purpose of entertainment and have no benefit in view, such as table football, pinball and any kind of sports simulators; and secondly, slot machines, which give the player an opportunity to win money or other prizes of monetary value (points, chips or goods). Equivalent to casino rules, the casino may adopt rules for its slot machines and submit them to the SFGB for approval. The rules need to be summarised in plain language and placed on the table game area or on each slot machine, and released on demand. The cantons are responsible for the licensing of gaming machines involving an element of skill. If the element of chance is predominant, gambling machines are subject to Article 3, paragraph 4 FGA and are only allowed to be operated in licensed casinos. Accordingly, machines that offer games of skill may be operated outside of casinos if permitted by cantonal law. The cantonal permission may only be granted in case the SFGB has qualified the respective gaming machine as skill-based.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

Liable for breaches of the relevant gambling legislation are the following parties:

- The casino licensee.

- The customer itself.
- The lottery and betting licensee.
- The gaming service operator and supporting third parties.

4.2 What is the approach of authorities to unregulated supplies?

To the extent that unregulated supplies significantly support the provision of unauthorised gaming services (e.g. marketing services), they may qualify as an abettor of the gaming operator and be held liable for its conduct. However, the authorities have so far only in very few cases investigated such conduct.

4.3 Do other non-national laws impact upon enforcement?

No, there are no other non-national laws which have an impact upon enforcement.

4.4 Are gambling debts enforceable in Switzerland?

Generally under Swiss law, gambling and betting do not give rise to a claim (non-actionable claim; article 513 of the Code of Obligations (SR 220; CO)).

However, lotteries and prize draws give rise to a claim only where they have been approved by the competent authority. In the absence of such approval, the claim is treated as a gambling claim. Lotteries or draws authorised abroad do not enjoy legal protection in Switzerland unless the competent Swiss authority has authorised the sale of tickets (see article 515 CO).

Further, article 515a CO states that games of chance in casinos give rise to claims where they take place in a casino licensed by the competent authority. Therefore, if the above-mentioned requirements are met, gambling debts are enforceable in Switzerland.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?

On April 30 2014, the Swiss Federal Council published its draft of a revised gambling law (Money Gaming Act) for consultation. The Money Gaming Act shall replace the current regulatory regime (see question 1.2). The new Money Gaming Act will not enter into force prior to 2018.

The essential innovation of the proposed law in a nutshell:

- Online gambling ban removed: The Money Gaming Act aims to replace the existing 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 shall qualify to apply for an online licence. Hence, the draft does not contain the possibility for foreign operators to enter into the Swiss market without partnering with a local terrestrial licence holder. Furthermore, in order to be able to extend an existing terrestrial concession to online gambling services, the applicant will have to establish the commercial viability of the planned service.
- Blocking of foreign operators: The proposed regime does not introduce a prohibition for the use of foreign online gambling services in Switzerland. However, the activities of non-licensed (foreign) providers shall effectively be reduced by means of technical measures and non-financial blocking

- measures. In particular, the Federal Council intends to technically block access to foreign online gambling providers without a Swiss licence.
- Tax Exemption: 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.
 - Player Protection: The revision aims to strengthen player protection by different measures like play suspensions, offer of treatment and advice against gambling addiction, etc.
 - Secure Gambling: Further, a number of provisions are in place to ensure secure and transparent gaming operations (e.g. measures against the manipulation of sports competitions).



Andreas Glarner

MME Partners
Kreuzstrasse 42
8008 Zürich
Switzerland

Tel: +41 44 254 99 66
Fax: +41 44 254 99 60
Email: andreas.glarner@mmepartners.ch
URL: www.mmepartners.ch/en

Dr Andreas Glarner works with international companies in the technology, industrial and internet sectors. He specialises in the fields of intellectual property, unfair competition, licensing and distribution, as well as information technology. He acts both as legal counsel and litigator in these fields. In addition, he has extensive expertise in compliance matters regarding gambling providers, e-transactions and export control measures. Andreas Glarner has published various articles on topics related to his practice areas.



Luka Müller-Studer

MME Partners
Gubelstrasse 11
6300 Zug
Switzerland

Tel: +41 41 726 99 66
Fax: +41 41 726 99 60
Email: luka.mueller@mmepartners.ch
URL: www.mmepartners.ch/en

Dr Luka Müller-Studer is an expert on complex compliance cases in the areas of financial regulations, gaming law, anti-money laundering, anti-corruption and judicial assistance and is an advisor of large compliance organisations, companies and governments. He developed AML processes for online gambling, digital payment and digital finance applications. He is co-founder of www.kyc.ch, which provides identification, risk management and risk assessment services for compliance organisations.

MME PARTNERS

MME Partners is an innovative business law, tax and compliance firm with offices in the two Swiss economic centres, Zurich and Zug. We advise and represent companies and their key people as well as private clients in commercial as well as private business matters. Each client relationship is managed by one of our partners.

We have a lean organisation and work efficiently with a modern technical infrastructure. All of our lawyers have international experience. Through our involvement in global networks (Primerus, IMGL, WITL) we provide fast and competent support in cross-border mandates.

The authors are leading the gaming law practice group of MME Partners. MME Partners advises national and international leading gaming service providers and governments in the area of gambling and lottery law, whether it be casinos or internet-based gambling services. MME Partners is an exclusive general member of the International Masters of Gaming Law (IMGL) as well as a member of the self-regulating organisation of the Swiss Casino Association (SRO SCV).