Gambling 2020
A practical cross-border insight into gambling law
Sixth Edition

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### Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

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<th>Relevant Product</th>
<th>Who regulates it in digital form?</th>
<th>Who regulates it in land-based form?</th>
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<tr>
<td><strong>Gaming</strong></td>
<td></td>
<td></td>
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<tr>
<td>Casino gaming (including slots and casino table games such as roulette &amp; blackjack)</td>
<td>The Swiss Federal Gaming Board (&quot;SFGB&quot;), based on the Money Gaming Act (&quot;MGA&quot;).</td>
<td>SFGB.</td>
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<td>Poker</td>
<td>SFGB.</td>
<td>SFGB. Small Poker tournaments (neither automated nor intercantonal): the cantonal authorities.</td>
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<td><strong>Betting</strong></td>
<td>Comlot.</td>
<td>Automated and/or intercantonal: Comlot. Small games (neither automated nor intercantonal): the cantonal authorities.</td>
</tr>
<tr>
<td>Sports/horse race betting (if regulated separately to other forms of betting)</td>
<td>Comlot.</td>
<td>Automated and/or intercantonal: Comlot. Small games (neither automated nor intercantonal): the cantonal authorities.</td>
</tr>
<tr>
<td>Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)</td>
<td>Switzerland does not have a special regulatory regime for fantasy betting, e-gaming and social gaming. It must be decided on a case-by-case basis if a bet/game qualifies as a casino or a large-scale or small-scale game under the gaming regulations. Dependent on that decision, SFGB, Comlot or the cantonal authority is the competent regulatory body.</td>
<td></td>
</tr>
<tr>
<td><strong>Lotteries</strong></td>
<td>Comlot.</td>
<td>Automated and/or intercantonal: Comlot. Small games: cantonal authorities.</td>
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<td><strong>Social/Skill arrangements</strong></td>
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<td></td>
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<tr>
<td>“Social” gaming with no prize in money or money’s worth</td>
<td>Social games with no prize in money/money’s worth are not considered gaming in the sense of the Swiss gaming regulations.</td>
<td></td>
</tr>
<tr>
<td>Skill games and competitions with no element of chance</td>
<td>Comlot.</td>
<td>Skill games that are not automated, intercantonal or online are not subject to the MGA.</td>
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</table>
Since 1 January 2019, casino games, lotteries, sports betting and skill games are regulated in the Money Gaming Act (“MGA”) and the Ordinance on Money Games (“MGO”). These laws generally regulate money games in which there is the chance to win a prize or other monetary advantage in return for a stake/monetary transaction to enter the game. The MGA distinguishes between casino games, lotteries, sports betting and skill games. Lotteries, sports betting and skill games can be categorised into large-scale (executed automatically, intercantonal or online) and small-scale games (neither automated, intercantonal nor online) (Art. 2 MGA).

Licensed land-based casinos can apply for an extension of their licence to offer online gaming. Licences for online betting and lotteries will only be given to Swisslos and Loterie Romande. Foreign providers cannot apply for a licence and their websites are blocked (DNS-blocking) by the Swiss authorities if the provider does not block access to the games from Switzerland itself.

**2 Application for a Licence and Licence Restrictions**

**2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?**

Swiss law distinguishes between terrestrial casino licences, and the extension of the terrestrial licences for online gaming, lottery and betting licences, and licences for small games (not executed automatically, online or intercantonal).

**2.2 Where Licences are available, please outline the structure of the relevant licensing regime.**

**Casino licence**
- A-type casino: no limits in stakes and the number of offered games and slot machines, connected jackpots and maximum winnings possible. Only casinos with a licence “A” qualify as Grand Casinos (Art. 6 MGA).
- B-type casino: usually for spa or resort casinos with a limited number of table games (3) and slot machines, limited stakes and jackpots may not be connected. The limit per stake for automated games in B-type casinos is CHF 25/game.

The number of licences is determined by the Federal Council, whereby the locations are distributed evenly among interested regions (Art. 7 MGA). A licence is usually granted for a period of 20 years and can be renewed (Art. 12 MGA). The licence can be extended for the offering of online games (Art. 9 MGA).

The concession is not transferable (Art. 14 MGA).

**Large-scale games (lotteries, sports betting and skill games which are executed automatically, intercantonal or online)**

In order to be able to offer large-scale matches, an organiser’s licence and a gaming licence are required. These are issued by Comlot, with the cantons deciding on the maximum number of lottery and sports betting operators to be licensed (Art. 23 MGA). Only Swisslos and Loterie Romande receive licences for large-scale games. This licence is not transferable to third parties (Art. 30 MGA).

Small game licence (lotteries, sports betting and skill games which are executed neither automatically, online nor intercantonally)

Small-scale games operators can apply for a cantonal licence with the competent cantonal authority. There are separate regulations concerning small lotteries and sports betting in the cantons.

**2.3 What is the process of applying for a Licence for a Relevant Product?**

The Swiss Federal Council decides on the maximum number of terrestrial casino licences that may be granted, and also defines the geographical locations of such casinos.

The written application for the casino licence must be submitted to SFGB. SFGB reviews the application and submits a proposal to the Swiss Federal Council (“SFC”). SFC then decides whether or not to grant a licence. Casinos holding a Swiss casino licence can apply for an extension of their licence to offer online games. The process of the application is the same as for a terrestrial casino licence.

Applicants of large-scale games must submit their application to Comlot (only Swisslos and Loterie Romande can receive this licence) and operators of small games must submit theirs to the cantonal authority.

**2.4 Are any restrictions placed upon licensees in your jurisdiction?**

Licensees may only provide casino games and large-scale/small games services within the scope of (i) the licence obtained, and (ii) the applicable regulations. Licences contain a wide range of restrictions with regard to the games that may be offered, how these games must be organised, what form and in which amounts payments may be accepted and how the marketing, social concept and security, as well as AML procedures, are organised. If the licensee fails to comply with the regulations, SFGB, Comlot or the cantonal authority may cancel or impose restrictions on the licensee.

**2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.**

A casino licence is usually granted for a period of 20 years (Art. 12 MGA). After the 20-year period has elapsed, 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 (Art. 15 MGA):
- The requirements for issuing the licence are no longer fulfilled.
- The licensee has obtained the licence based on incomplete or false information.
- The licence has not started operations within the time limit set by SFGB.
- The licensee leaves the business inoperative.
- The licence is used for any unlawful or improper purposes.

The licence for large-scale or small games is not subject to a fixed term but can be limited in time and be renewed. In addition, the licence can be subject to conditions and obligations (Art. 29 MGA). If the legal requirements for the licence are no longer given, Comlot (or in cases of small games, the cantonal authority) can withdraw the licence. The licence may also be suspended, restricted or subject to additional conditions and obligations (Art. 31 MGA).
### 2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

- Casino games: the limits on the types of games, stakes and the maximum number of slot machines depend on the type of the licence (A licence or B licence, see question 2.2 above).
- Large-scale lotteries: may only be offered by Swisslos or Loterie Romande.
- Small lotteries (cantonal licence): the maximum stake for a single bet is CHF 10, with a maximum of CHF 100,000 for total stakes (Art. 37 MGO, total stakes of CHF 500,000 if the goal of the lottery is to finance an event of supra-regional importance). The value of the prizes must be at least 50 per cent of the maximum total stakes.
- Small local sports bets (cantonal licence): maximum stake of CHF 200,000 for total stakes in one competition day (Art. 38 MGO).
- Small poker tournament (cantonal licence): maximum entry fee of CHF 200, with a maximum of CHF 20,000 for total entry fees. There are additional restrictions regarding the number of tournaments, number of participants, duration of tournaments, etc. (Art. 39 MGO).
- Tombola: maximum total stake of CHF 50,000 (Art. 40 MGO).
- Any advertisement for the commercial offering of games of chance is prohibited if made in an obtrusive way (Art. 74 MGA). Advertising may also not be addressed to minors or persons subject to a ban. Additionally, advertising for money games not licensed in Switzerland is prohibited.
- Any prohibited promotion can be sanctioned with a fine up to CHF 500,000 (Art. 131 MGA).

### 2.7 What are the tax and other compulsory levies?

**Casinos**

In accordance with the Swiss constitution, a casino’s gross revenues are taxed. The collected tax funds flow into Switzerland’s pension system.

Terrestrial casinos: the basic tax rate is 40 per cent (up to CHF 10 Mio. GGR). The federal government can change the current level of taxation rates up to 80 per cent (Art. 120 MGA). Online gaming: the basic tax rate is 20 per cent (up to CHF 3 Mio. GGR) and can be increased up to 80 per cent (Art. 120 MGA).

**Players**

Winnings from terrestrial casinos are tax exempt. This also applies to winnings from online casino games and lotteries, sports betting or large games of skill up to CHF 1 Mio., if the games are licensed in Switzerland.

Winnings from small games (not executed automatically, intercantonal or online) are tax-free if they are licensed by the competent cantonal authorities. Winnings from lotteries or games of skill for sales promotions are tax-free up to CHF 1,000. Winnings from foreign casinos, resp. non-licensed games, are fully taxed.

### 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 social concept, including measures to prevent gambling addiction and strict security policies (Art. 76 MGA).

The social concept of casinos and providers of online games of luck must include the following measures:

- information for players about the risks of games, possibilities for self-control, bans, etc.;
- early identification of at-risk players;
- implementation of bans;
- education of personnel; and
- data collection on the effectiveness of the measures.

### 2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

Casinos are subject to the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sectors (“AMLA”) and are considered as financial intermediaries. 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 a casino.
- When they reach a certain threshold.
- When they establish a certain business relationship (accounts or deposits).

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. The Federal Justice and Police Department has issued an ordinance to specify the AML requirements for providers of large games (intercantonal, automated or online lotteries, sports bets and games of skill).

Virtual currencies: neither the MGA nor the MGO have imposed any restrictions on virtual currencies.

### 3 Online/Mobile/Digital/Electronic Media

#### 3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

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. Since 1 January 2019, existing casinos with a Swiss licence can apply for an online licence.

Offering non-licensed online games within Switzerland is prohibited. Foreign, non-licensed operators who offer online cash games of luck to Swiss players may be foreclosed from the Swiss market through the introduction of DNS blocking measures, to be implemented by the Internet access providers (Art. 86 MGA).

However, foreign providers will be able to cooperate with Swiss casinos in order to offer their online services legally in Switzerland. The cooperation will, amongst other requirements, only be approved if the cooperation partner has a “good reputation.”
3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

The access to online games requires a gaming account with the operator. To be able to open an account, a player must be over 18 years old, Swiss-resident and not be banned from gaming. The provider of online games must identify the players. Winnings from licensed gambling can only be transferred to accounts in the name of the player (Art. 45 ss. MGO).

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

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

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 rules for the control and construction of the slot machines are set forth in the Casino Ordonnance. The MGO contains restrictions on the stakes for slot machines according to the type of the casino licence (A or B).

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

The following parties are liable for breaches of the relevant legislation:
- the casino licensee;
- the customer itself;
- the large-scale/small game licensee; and
- the gaming service operator and supporting third parties.

4.2 What form does enforcement action take in your jurisdiction?

The licence may be withdrawn from domestic casinos or large-scale operators. In addition, prison sentences and high fines of up to CHF 500,000 can be imposed (Art. 131 MGA).

Websites of foreign gaming providers can be blocked and the provider will be listed on a public blacklist (Art. 86 MGA).

4.3 Do other non-national laws impact upon liability and enforcement?

No, there are no other non-national laws that have an impact upon liability and enforcement. Switzerland is not a member of the European Union; therefore, EU law is not applicable.

4.4 Are gambling debts enforceable in your jurisdiction?

In general, under Swiss law, gambling and betting debts do not give rise to a claim (non-actionable claim; Art. 513 of the Code of Obligations [SR 220]).

A claim may arise if the claim arose during a licensed lottery game or during a game in a casino licensed by the competent authority (Art. 515 of the Swiss Code of Obligations).

4.5 What appetite for and track record of enforcement does your local regulatory authority have? Have fines, licence revocations or other sanctions been enforced in your jurisdiction?

2018

SFGGB imposed fines in the amount of CHF 1.5 Mio. and demanded CHF 500,000 compensation for illegally earned profits (based on the gambling legislation in force until 31 December 2018). SFGGB did not enforce other (administrative) sanctions.

In 2018, Comlot opened 78 cases for suspected violations of the lottery legislation (based on the lottery legislation in force until 31 December 2018).

2019

The MGA came into force on 1 January 2019 and the first online licences were granted in summer 2019. It remains to be seen whether the blocking measures, the new player protection measures and the new provisions to ensure secure and transparent gaming operations prove their worth in practice.

5 Anticipated Reforms

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

Since a legal reform has just taken place, and the new Money Gaming Act and the Money Gaming Ordinance came into force at 1 January 2019, no further reform is pending for the time being.
Dr. Andreas Glarner works with international companies in the technology and entertainment sectors. He leads MME’s gaming group and is a general member of IMGL. Next to his gaming practice, Andreas has extensive experience in fintech, blockchain technology applications and e-payments – both from a legal and compliance perspective. Andreas has published various articles on topics related to his practice areas.

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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 (IMGL and WITL), we provide fast and competent support in cross-border mandates.

The authors lead the gaming law practice group of MME. MME advises leading national and international gaming service providers – both casinos and Internet gambling services – in gambling and lottery law. MME is an exclusive general member of the International Masters of Gaming Law and a member of the Self-Regulating Organisation of the Swiss Casino Association (SRO SCV).

Our attorneys regularly act as advisors to the SRO SCV and assist the Industrial Federation of Swiss Gambling Houses, as well as national and international supervisors and gaming providers, in the implementation of legal and regulatory provisions.

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