

Switzerland's draft bill will not make for an attractive market

Currently, Switzerland's regulatory regime in the gaming sector restricts the organisation or operation of online games of chance for money. This has resulted in substantial gambling revenues leaving the country. To regain the associated tax incomes and support the local casino industry, the Swiss Federal Council ('Council') released on 21 October a revised draft regulation to legalise online gambling. Dr Andreas Glarner and Dr Luka Müller-Studer, Legal Partners at MME, provide detailed analysis of the draft law.

Existing Swiss law

The Swiss Federal Constitution (Article 106) distinguishes between two kinds of gaming, i.e. casino games (games of chance, such as roulette, blackjack, etc.) and bets/lotteries.

Casino games

Casino games, such as poker, blackjack or roulette are qualified as cash games of chance and are governed by the Federal Act on Games of Chance and Casinos ('FGA'). While organising or offering cash games of chance within licensed terrestrial casinos is legal, the organisation or operation of online (remote) games of chance (e.g. online casinos) is always illegal. Thus, no licences may be obtained to provide such online gambling services in Switzerland.

The supervising authority for casino games is the Federal Gaming Board ('FGB'), which is part of the Federal Department of Justice and Police. The FGB has regulatory oversight over casinos and supervises their compliance with the FGA. Furthermore, the FGB is in charge of deciding whether a game shall be qualified

as a game of chance or a game of skill and, thus, shall be subject to the FGA. Casino licences, on the other hand, are issued by the Federal Council, which also determines the number of licences that may be issued and their period of validity.

Lotteries and sports betting

Lotteries, bets (incl. sports betting) and bingo (as well as lottery-like and related activities) are governed by the Federal Act on Lotteries and Commercial Betting ('SLA'). Article 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 totalisator (pari-mutuel) at local live sports events with a special licence. Not taking into consideration this exception, regulatory prohibitions exist concerning the provision of sports betting services in Switzerland.

Nevertheless, individual cantons have assigned betting permits/licences to two (cantonal) organisations (Swisslos and Loterie Romande). 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 did grant licences. However, as of today, only Swisslos and Loterie Romande have obtained such licences for sports betting services. Apart from that, internet-based lottery and betting services are illegal in Switzerland.

Betting and lotteries are under the supervision of the cantons, which for their part assigned this task to the Intercantonal Lottery and Betting Board ('Comlot'). Comlot evaluates the licence applications of lottery and betting operators and supervises compliance with laws, regulations

and licensing requirements.

Revision process

It was only in 2000 that the prohibition on games of chance under the Swiss Constitution was lifted and the casino industry began to flourish. But since its peak in 2007, the industry has suffered a 27% decline in revenues and a 34% decline in licence payments. As a result of online gambling services, customers are less inclined to visit terrestrial casinos. To the disadvantage of the Swiss casino industry, the current Swiss regime bans the operation of online casino games for money.

The Swiss regulator started to work on a revised gambling regulation in 2010. The first draft was released for consultation in spring 2014 by the Council. During the consultation period - which ended in August 2014 - the cantons, political parties and other interested groups submitted their comments on the draft prior to its release to the parliament for deliberation. The Council then revised the draft, taking into account the various inputs received during the consultation period. The new draft released on 21 October 2015 is expected to be deliberated in parliament in 2016.

Content of the draft regulation

The draft regulation does not provide for a contemporary legal framework designed to make Switzerland an attractive domicile for international online gambling operators. Even though the draft introduces some substantial changes, it corresponds to a large extent to the current regulation and will not result in making Switzerland the next gambling hotspot. The important proposals of the draft are the following:

Single law approach

One of the central elements of the

Casinos (terrestrial and online) as well as cash games of chance	<p>Terrestrial operations: subject to a licence requirement Online operations: illegal Legislation: Federal Gaming Act Supervision: Federal Gaming Board</p>
Any other games such as lotteries, bets and bingo	<p>Terrestrial operations: subject to a licence requirement Online operations: principally illegal, but cantons may grant licences (<i>de facto</i> duopoly situation) Legislation: Swiss Lottery Act Supervision: Comlot (Intercantonal Lottery and Betting Board)</p>
Skill games and prize competitions	<p>Regulated by cantonal law. Principally, skill games and such prize competitions may freely be organised subject to certain cantonal restrictions.</p>

draft is that it abolishes the current framework which regulates casino games and bets/lotteries with a set of two laws. In order to guarantee a coherent regulation, the proposed draft consolidates these two decrees into a single federal law, the Money Gaming Act. However, the twofold supervision shall remain.

Online gambling licence

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 holders of a terrestrial casino licence will qualify as potential online concessionaires. Foreign online gambling providers principally may enter into an early strategic alliance with a Swiss casino in order to be able to enter the Swiss market. However, in order for the Swiss authorities to approve such a joint venture, the foreign operator will need to prove that it has 'a good reputation.' The threshold to be met is yet unclear. In particular, it is unclear if 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.

Blocking of foreign operators

The Council intends to technically block access to foreign online gaming providers if their services

have not been licensed in Switzerland. Thereby, the Federal Council argues that such measures are required to protect Swiss players from unregulated foreign offers. In a first phase, the technical blocking measures shall be implemented via IP-address blocking conducted by ISPs, who will need to block access to foreign providers that are blacklisted.

So far, only a few critics have rejected the proposed technical blocking measures. However, an intense discussion in parliament is expected: so far, such measures have only been implemented to fight child pornography on the internet - a subject matter with substantially higher protection requirements. It seems more than questionable whether restricting the individual from freely accessing the internet is an adequate and proportionate measure to prevent unlicensed gambling services.

Poker tournaments

It will be possible to organise small poker tournaments outside casinos under tight conditions (a limited amount of participants, limited buy-in, no risk from the operator, etc.) that are yet to be defined.

Full tax exemption

The different tax treatment of casino and lottery games is eliminated (currently gains from lotteries and sports betting need to

be taxed whereas gambling gains are exempted). The draft proposes an exemption for all gains resulting from real money gambling. As this exemption is expected to result in a decline in annual tax revenues of around CHF 120 million, parliamentary discussion is likely to be intense.

Stronger protection of players/transparency

The new act also proposes to strengthen the protection of players by raising the responsibility of both gaming providers and the cantons. Thereby, the cantons will need to implement measures to prevent gaming addiction and set up counselling facilities for people suffering from gambling addiction. Furthermore, the draft contains provisions to guarantee secure and transparent gaming operations, e.g. measures against the manipulation of sports competitions.

What's next?

We expect that the proposed regime, in particular the technical blocking measures, will lead to lengthy discussions and be subject to changes. The new Money Gaming Act will not enter into force prior to 2019.

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