

Switzerland's Parliament passes the new Money Gaming Act

Switzerland's Parliament passed in late September 2017 the new Money Gaming Act, which consolidates the country's existing laws on casino games and betting/lotteries respectively into one single law. Crucially, the new Act will remove the existing ban on online gambling and create a system whereby holders of terrestrial casino licences will have the opportunity to offer casino games online. Dr Andreas Glarner, Yannik Hässig and Dr Alexandra Körner of MME Legal Tax Compliance outline the new Act, how it amends the current regulatory framework and the Act's controversial IP blocking measures, and discuss the prospect of a referendum being held to block the new law on the basis of concerns around these IP blocking measures.

On 29 September 2017, the Swiss Parliament passed the new Swiss Money Gaming Act, which replaces the current framework that regulates casino games and betting/lotteries via two different laws: the Federal Act on Games of Chance and Casinos ('FGA') and the Federal Act on Lotteries and Commercial Betting ('SLA').

The current regulatory framework

The existing Swiss legislation on gaming law regulates casino games - like poker, blackjack and roulette - and lotteries/bets in two individual laws. The former are governed by the FGA, while the SLA governs other games such as lotteries, bets and bingo. Skill games and prize competitions such as tombolas do not fall under these federal laws, but are regulated by cantonal law.

Casinos

The offering of casino games is subject to a casino licence. Such licences are issued by the Federal Council. Under the current regulation, licences are only granted for the operation of terrestrial casinos; the offering of online casino games is always illegal.

The Federal Gaming Board ('FGB') supervises casino games. In particular, it supervises the compliance of casinos with the FGA and decides whether a game is considered as a game of skill or a game of luck. In the latter case, the game is subject to the FGA.

Lotteries and betting

Lotteries of any kind and lottery-like undertakings are generally prohibited, while lotteries serving not-for-profit or charitable purposes are exempt from this prohibition, provided they are permitted by cantonal law. In this case the permission is subject to a licence. To date, licences

have only been granted to Swisslos and Loterie Romande. Hence, Switzerland currently has a lottery duopoly.

The commercial offering, the sale, the acceptance and the advertisement of bets - including sports betting - is generally prohibited. 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.

In addition, individual cantons have assigned betting licences to two cantonal organisations (Swisslos and Loterie Romande). Thus, in a similar way to lotteries, a betting duopoly exists. The lottery and betting sector is primarily enforced by cantonal authorities, the Intercantonal Betting Board ('Comlot') in particular.

New Swiss Money Gaming Act

The new Act aims at replacing this framework of two different laws through one single Act. The Act dates back to a referendum in 2012, in which a revised article concerning the regulation of gaming and gambling was introduced to the Swiss Federal Constitution.

The Money Gaming Act has existed in draft form since 2014 and shall implement and specify this new constitutional provision. On 29 September 2017, the two chambers of the Swiss Parliament eventually agreed on the wording and passed the law in a final vote. Under the Money Gaming Act, a concession or licence is still required for the offering of money games. However, the Act provides notable changes to the current regulation, including the abolition of the online gambling ban, the introduction of net blocking for foreign online gambling websites, the legalisation of

poker tournaments outside casinos under certain conditions and a higher non-taxable threshold for wins from money games outside of casinos.

Online gambling concession

The Money Gaming Act abolishes the existing online gambling ban and enables casinos to offer casino games online. However, this opportunity is only given to holders of a terrestrial casino licence. Thus, the Money Gaming Act does not contain the possibility for foreign operators to enter into the Swiss gambling market without partnering with a local terrestrial licenceholder.

In order to be entitled to operate online casino games, the casinos require an extension of their concession. Further, 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.

For suppliers to operators, there is no licence requirement. However, suppliers can only provide their services to licensed operators. In order for the Swiss authorities to approve such collaboration, the Swiss operator will need to provide evidence that its foreign supplier has 'a good reputation.' It is yet unclear what test the Swiss authorities will apply with regard to these criteria and to what extent past business activities will be taken into consideration in this assessment.

Blocking of foreign operators

The Money Gaming Act stipulates that blacklists of non-licensed providers of casino game websites are kept and that access to the listed websites has to be blocked by internet access providers. The blacklists will be kept

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by the Swiss Federal Gaming Board and the Intercantonal Betting Board. Only websites by operators that are domiciled abroad or disguise where they are domiciled are blacklisted. According to the legislative materials, the blacklists will primarily contain domain names. However, the Money Gaming Act leaves the door open for the use of other technical means, depending on future developments.

Details of the process of how a domain name will be blocked are yet to be established and will be legislated in the form of an ordinance. But principally, the authorities will blacklist certain domain names and inform internet access providers, who will be obliged to implement the blocking within a certain deadline. Internet access providers will be compensated for the costs incurred as a result of this blocking.

The introduction of the blocking measures was heavily disputed as part of the legislative process given that the technical blocking measure strongly interferes with personal rights and restricts the rights of individuals to freely access the internet. Nevertheless, the majority of the Parliament eventually agreed with the argument that such measures are required to protect Swiss players from unregulated foreign gambling services. This was despite the fact that experts agree that technical measures may easily be circumvented and thus IP blocking does not constitute an effective way to protect Swiss players. However, the last word on this topic has not been spoken yet: A group of young parties have announced that they will try to organise a referendum against the blocking measure which forms part of the new Act.

Small-scale poker tournaments

The Money Gaming Act abolishes the ban on small-scale poker tournaments outside of casinos. Such tournaments are legalised under certain conditions, but will be subject to a licence. The licence requirements include: limitations on the amount of participants, limitations on buy-in, no risks relating to the operator and public location. Further requirements are yet to be defined by the Federal Council.

Taxation of gains

Under the current regulation, gains from lottery and sports betting are taxed if they exceed CHF 1,000, while gambling gains in casinos remain untaxed. The draft of the Money Gaming Act by the Federal Council provided for an elimination of this different tax treatment by a tax exemption for all gains resulting from money gaming. As this tax exemption was expected to result in a decline of tax revenues of around CHF 120 million per year, it was discussed intensely in Parliament. Eventually, the two chambers of the Parliament agreed on a compromise: gains from lottery and sports betting are taxed only if the gains exceed CHF 1,000,000. In addition, gains from online gambling are also subjected to income tax.

Stronger protection for players and transparency

The Money Gaming Act provides for stronger protection for players by raising the responsibility of both gaming providers and the cantons. As such, the cantons will need to implement measures to prevent gaming addiction and set up counselling facilities for people suffering from an addiction to gambling. This stronger level of protection for players includes that in addition to the casinos, the operators of large-scale games will be obliged to take appropriate

safeguarding measures, depending on the risk potential and the distribution channel of the respective games.

Furthermore, the Act contains a number of provisions to guarantee secure and transparent gaming operations, e.g. measures against the manipulation of sports competitions.

What's next?

Now that the Swiss Parliament has reached an agreement on the Money Gaming Act, it will be published. Swiss law provides citizens with the opportunity to launch a public referendum if they oppose the law. For the referendum to go ahead, only 50,000 eligible voters must provide their signature within 100 days after the law has been published. If the criteria are met, the electorate can vote on the disputed law. For the law to be put into force definitely, a (simple) majority of all the votes cast is needed.

Mainly because of the technical blocking measures, the opposing parties have announced that they will launch a referendum against the Money Gaming Act. However, so far, there is little political support for such a referendum. Only youth wings of political parties have announced their support, while even part of the organisations representing the ICT economy in Switzerland - who had clearly spoken against the blocking of foreign operators of online casino games - have announced that they will not support such a referendum. We will see by the beginning of next year whether the referendum committee is successful in collecting the required amount of signatures needed in order for the referendum to proceed. In any case, it seems unlikely that the new Money Gaming Act will enter into force prior to 2019.