



ICLG

The International Comparative Legal Guide to:

Gambling 2019

5th Edition

A practical cross-border insight into gambling law

Published by Global Legal Group, with contributions from:

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Published by
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London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
November 2018

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ISBN 978-1-912509-44-7
ISSN 2056-4341

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Switzerland

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1 Relevant Authorities and Legislation

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

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Until end 2018: no regulating body, as online games of chance are illegal in Switzerland (art. 5 Federal Act on Games of Chance and Casino ("FGA")). As of 1 January 2019: The Swiss Federal Gaming Board ("SFGB"), based on the new Money Gaming Act ("MGA").	The Swiss Federal Gaming Board ("SFGB").
	Poker	Until end 2018: No regulating body, as online games of chance are illegal in Switzerland (art. 5 FGA). As of 1 January 2019: the SFGB.	The SFGB.
	Bingo	Until end 2018: no regulating body, as online games of chance are illegal in Switzerland (art. 5 FGA). As of 1 January 2019: the intercantonal lottery and betting authority ("Comlot").	Automated and/or intercantonal: the intercantonal lottery and betting authority ("Comlot").
Betting	Betting	Comlot.	Automated and/or intercantonal: Comlot. Neither automated nor intercantonal: the cantonal authorities.
	Sports/horse race betting (if regulated separately to other forms of betting)	No separate regulation.	
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	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 lottery, bet or casino game under the gaming regulations. Dependent on that decision, the SFGB or Comlot is the competent regulatory body.	
Lotteries	Lotteries	Comlot.	Intercantonal and/or automated: Comlot. Neither intercantonal nor automated: the cantonal authorities.
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Social games with no prize in money/money's worth are not considered gaming in the sense of the Swiss gaming regulations.	
	Skill games and competitions with no element of chance	As of 1 January 2019: Comlot.	

1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

Until the end of 2018, the Swiss Constitution distinguishes between two kinds of gaming: casino gambling; and betting/lotteries (art. 106, Swiss Federal Constitution). The Federal Act on Games of Chance and Casino (“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 Swiss Lottery Act (“SLA”). While organising or offering cash games of luck within licensed terrestrial casinos is legal, the organisation or operation of online games of luck is always illegal. Lotteries and the professional provision of betting services related to sports events are prohibited by the SLA. Exceptions only apply to Swisslos and Loterie Romande, which have acquired licences based on cantonal law.

From 1 January 2019, casino games and lottery/betting will be regulated in one single law: the new Money Gaming Act (“MGA”). The licence regime for terrestrial games remains the same. However, casinos with a terrestrial licence can apply for an extension of their licence to offer online gaming. Licences for (online) lotteries and betting will remain only with Swisslos and Loterie Romande. The MGA introduces the possibility to use IP blocking measures for foreign operators of online gaming and betting if they provide their services to Swiss players.

To the extent the following explanations do not explicitly refer to the regulatory framework in place until the end of 2018, they relate to the regulatory setup in force as of 1 January 2019.

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 (location and operation licences), the extension of the terrestrial licences for online gaming (“online licence”, as of 1 January 2019) and lottery and betting licences (terrestrial or online).

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

Casino licence

A-type casino: no limits in stake, 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 casino: usually for 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 CHF 25 and the maximum jackpot offered is CHF 25,000.

Lottery/betting licence

The lottery market is regulated by the SLA. However, the implementation of the SLA is subject to cantonal law. Today, as

well as under the new law, Comlot grants the licences to the lottery providers. So far, only Loterie Romande and Swisslos have received such licences. It is likely that also under the new law, no new providers will receive licences. Small lotteries and small-scale betting operators can apply for a cantonal licence. The small lotteries and small-scale betting may neither be carried out intercantationally nor be automatic in order to obtain such a licence.

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 a casino licence must be submitted to the SFGB. The SFGB reviews the applications and submits a proposal to the Swiss Federal Council (“SFC”). The SFC decides whether or not to grant a licence – this decision is final. Casinos can be operated only after the licence has been granted by the SFC and issued by the SFGB.

Under the new MGA, casinos holding a Swiss casino licence can apply for an online licence. The process of the application is the same as for a terrestrial casino licence.

Applicants for lotteries and/or betting must submit their application to Comlot (art. 5 SLA, art. 105 ss. MGA). However, only Swisslos and Loterie Romande are (and will be) licensed to provide intercantonal lottery and sports betting services.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Licensees may only provide gaming or lottery/betting services within the scope of (i) the licence obtained, and (ii) the applicable regulations. Casino 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, the SFGB or Comlot may cancel or impose restrictions on the licensee.

Lottery/betting 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.

2.5 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 (the conditions remain the same under the new MGA):

- 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.

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, winnings and 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 (with a cantonal licence): the maximum stake for a single bet is CHF 10, with a maximum of 100,000 CHF for total stakes (art. 34 Ordonnance to the MGA).

Small sports bets (cantonal licence): there is a maximum stake of CHF 200 per bet, with a maximum CHF 200,000 for total stakes on one competition day (art. 35 Ordonnance to the MGA).

Small poker tournaments (cantonal licence): there is a maximum stake of CHF 200 per bet, with a maximum CHF 20,000 for total stakes. Additional restrictions apply regarding the number of tournaments, number of participants, duration of tournaments, etc. (art. 37 Ordonnance to the MGA).

Tombola: there is a maximum total stake of CHF 25,000 (art. 38 Ordonnance to the MGA).

Any advertisement for the commercial offering of games of chance is prohibited if made in an obtrusive way (art. 74 MGA). 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?

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 (for gross gaming revenues of up to CHF 10 million). 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 gross revenues of CHF 3 million. If the gross revenues exceed this sum, the tax rate rises to the maximum rate of 80 per cent (art. 120 MGA).

Gains resulting from cash games of luck which do not exceed CHF 1 million are tax-free. Gains from lotteries or skill games for advertising purposes are subject to tax if the gain exceeds the cantonal boundaries.

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 (art. 76 MGA).

The social concept of casinos and providers of online cash 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 financial intermediaries. The SFGB has issued an ordonnance to clarify the application of the AMLA for casinos. In addition, the majority of 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 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 financial intermediaries.

Virtual currencies: neither the new Swiss Money Gaming Act nor the above-mentioned ordonnance 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. From 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 IP 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?

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. Gains from gaming can

only be wired to accounts in the name of the player (art. 45 ss. Ordonnance to the MGA).

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 the SFGB as skill-based.

However, if gaming machines involve a predominant element of chance, they must only be operated in licensed casinos.

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 simulator).
- 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 Ordonnance to the MGA contains restrictions as to the stakes for slot machines according to the type of 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 lottery and betting 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 lottery/betting operators. In addition, prison sentences and high fines up to CHF 500,000 can be imposed (art. 131 ss. MGA).

Websites of foreign gaming providers can be IP-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).

5 Anticipated Reforms

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

The new Money Gaming Act is expected to enter into force on 1 January 2019.

The MGA, on the one hand, will open the online market for Swiss casinos. On the other hand, it aims to strengthen player protection through different measures, such as play suspensions and the offering of treatment, advice against gambling addiction and marketing restrictions. In addition, a number of provisions are in place to ensure secure and transparent gaming operations (for example, new measures against the manipulation of sports competition).

Once the new law has entered into force, it remains to be seen how the new law will prove its worth in practice.

Acknowledgment

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