

THE  
GAMBLING LAW  
REVIEW

SECOND EDITION

Editor  
Carl Rohsler

THE LAWREVIEWS

# THE GAMBLING LAW REVIEW

The Gambling Law Review

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# PREFACE

Welcome to the second edition of *The Gambling Law Review*.

Last year I said that my aim in editing this book was to try to fulfil an ambition that I had held for nearly a decade – namely to develop a structured summary of the corpus of gambling laws across a wide variety of different jurisdictions. I hoped that it would be a useful book for the busy in-house counsel seeking to understand the structure of the law in a particular country, and for the academic studying the growth and development of law, as well as a useful case study in the field of comparative law.

All such projects take time and cooperation. Last year, in our first edition, we surveyed the law of 15 different jurisdictions – enough to demonstrate a ‘proof of concept’, but still somewhat smaller than my aspirations. This year, I am pleased to say that we have 10 more chapters, covering countries as diverse as Japan, Russia and Alderney, as well as two useful overviews of the EU and the federal US positions. Of course, 22 jurisdictions and three overviews does not yet make the guide comprehensive, still less an ‘encyclopaedia’, but I think that it is clear that we are well on the way to realising our aim of compiling a valuable resource in collecting and analysing the world’s gambling laws. I am all the more pleased now that the contents will be fully available online as well as in printed form.

As always, I am extremely grateful to those busy lawyers (all lawyers are busy, but gambling lawyers more than most!) who have agreed to spend their time and effort in distilling their knowledge and experience into a chapter. Distillation is a tricky science, and I am reminded a little of the line of Blaise Pascal who, writing to his friend, apologised as follows: ‘*Je n’ai fait celle-ci plus longue que parce que je n’ai pas eu le loisir de la faire plus courte*’ (‘I wrote you a long letter, because I did not have the time to write a short one’).<sup>1</sup> It is indeed a skill to decide what one can say about a complex area of law in a short space, to be both compact and comprehensive. Generally speaking, we have tried to maintain the same form for each of the chapters in order to ensure a degree of conformity of style and subject matter – but it is true that there is such a spectrum of different approaches to gambling law, that we also have to exercise flexibility in order to make sense of the subject matter.

In selecting the territories for this review, I have sought to include a wide range of different countries across the world. The selection is based on a number of factors, including the advice of clients and practitioners, the importance of gambling activity in the jurisdiction,

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1 I am going to propose M Pascal as the patron saint of gambling lawyers. A powerful thinker and logician he was also a persuader and mathematician who, with Fermat, essentially created the science of probability. His research into the possibility of a perpetual motion machine gave rise to his invention of the Roulette Wheel, and he even applied the logic of wagers as a basis for rationalising belief in God.

and even matters as simple as population and GDP. I have, I am sure, missed a number of countries that thoroughly merit inclusion. I take full responsibility for (but mean no offence by) those omissions. I should very much like to achieve a little more coverage in Asia and Europe, as well as a foray into Africa, which would provide some welcome diversity – and I am happy to receive suggestions and volunteers.

Looking back at my preface to the first edition, I am struck very much by how far the world has changed in a single year. Writing in June 2016, I would have bet against both a Trump presidency and the British exit from the EU. Weighing up the implications of these events and shifts in public feeling is tricky: will the new US administration take a more liberal position on gambling, given that the president is a champion of individual choice (and a noted casino owner)? Will the UK's withdrawal from the EU spell a change in Gibraltar's status as an international gambling hub? We cannot yet know. Perhaps when we have finished the 10th edition of this work (no doubt covering by then, 50 jurisdictions) we will be able to look back across the editions as legal historians and chart how different political forces have impacted on the sector.

Before we get started, I want to express my sincere gratitude to all those who have helped bring this second edition together – contributors both old and new, for their time and commitment as well as the editorial team at The Law Reviews, for their good organisation and encouragement. Thank you all. This is very much a team effort, and I am extremely grateful to you for bringing this project to its next stage.

**Carl Rohsler**  
Squire Patton Boggs  
London  
June 2017

# BRAZIL

*Luiz Felipe Maia*<sup>1</sup>

## I OVERVIEW

Brazil is the largest and most populated country in Latin America, with a total area of 3,265,080 square miles and a population of more than 207 million people<sup>2</sup> (it is the fifth-largest country in the world with regards to size and population). Brazil is a federation divided into 26 states, one Federal District and 5,570 municipalities.

Since 2012, owing to the depreciation of the real against the US dollar and the economic recession that began in 2015, Brazil's GDP has decreased and the country is now the world's ninth-largest economy,<sup>3</sup> having formerly been the sixth-largest in 2011.

Almost all gambling activities have been prohibited in Brazil for over 70 years. Since the general ban on games of chance in 1941, the only legal gambling activities are the lotteries under the state monopoly, and horse race wagering. According to Brazilian law, poker is a game of skill and is therefore not illegal.

With the economic turmoil, it has been said that gambling regulation (and taxation) may help the government to raise revenues. A bill of law is currently under discussion in the Congress, and a final decision on the matter is expected in 2017.

### i Definitions

Gambling, in general, is not regulated in Brazil. In fact, since the 1940s, Brazil has been a closed market for gambling, with only state-owned lotteries and horse race wagering. For a brief period in the 1990s, bingos and slot machines were permitted, but they were banned in the mid-2000s.

As a consequence, Brazil's gambling regulation is still incipient. 'Game' is a contract type expressly nominated, but not defined, by the Brazilian Civil Code. Its definition is provided by jurisprudence.

Luiz da Cunha Gonçalves<sup>4</sup> defines a game contract as 'a commitment, agreed as for hobby or as for desire for money, between two or more individuals, in which each player

---

1 Luiz Felipe Maia is founding partner at FYMSA – Franco, Yoshiyasu, Maia, Simões & D'Alessio Advogados.

2 Brazilian Institute of Geography and Statistics. Projection of the population of Brazil and Federative Units. Accessed on 4 April 2017. Available at [www.ibge.gov.br/apps/populacao/projecao](http://www.ibge.gov.br/apps/populacao/projecao).

3 World Economic Forum. The world's 10 biggest economies in 2017. Accessed on 4 April 2017. Available at [www.weforum.org/agenda/2017/03/worlds-biggest-economies-in-2017](http://www.weforum.org/agenda/2017/03/worlds-biggest-economies-in-2017).

4 Luiz da Cunha Gonçalves, *Tratado de Direito Civil*, Volume 8, Tomo I, São Paulo, Max Limonad (1956) p. 380.

agrees to pay a certain sum of cash or something else to the other party(ies) if he/she loses, based on some future event, which implementation depends, at least in part, on the activity of the players’.

Clóvis Beviláqua,<sup>5</sup> the author of the previous Brazilian Civil Code, defines a game contract as a random contract, in which two or more people promise a certain sum, among the contractors, to the person for whom the result of chance is most favourable. In the same vein, Pablo Stolze Gagliano and Rodolfo Pamplona Filho<sup>6</sup> provide a very detailed explanation on game contracts:

*In fact, the contract game can be defined as a legal transaction whereby two or more people hold a particular promise (usually with pecuniary content) in favour of the person who achieves a favourable result in the performance of an act in which everyone participates.*

*Note that the game (and thus the success or failure of each party) necessarily depends on the performance of each party (called a player), either by his intelligence, or by his skill, strength, or simply luck.*

*The bet contract, in its turn, is a legal transaction in which two or more people with different opinions on a certain event, promise to perform a particular action (in general, with monetary content) to the benefit of the party whose opinion prevails. Hence, in the bet, there is not the requirement for the active participation of each party (called a bettor) to influence the outcome of the event, but rather only the expression of her/his personal opinion.*

The difference between a ‘game’ and a ‘bet’ is that the result of a ‘game’ will depend on the action of the parties, while the result of a ‘bet’ depends on facts unrelated to the parties’ will. It is important to highlight that these definitions have been created by jurisprudence and are not expressly set forth by law, although they are widely accepted and applied by the courts.

‘Games of chance’ are defined by Article 50 of Decree-Law 3,688/1941 (the Misdemeanour Law or Criminal Contravention Act) as:

- a* a game in which winning or losing depends exclusively or principally on chance;
- b* bets on horse races outside the racetrack or other authorised venues; and
- c* bets on any other sport competition.

‘Public place’ is defined as:

- a* a private house in which games of chance are held, when those who usually take part are not members of the family that lives at the house;
- b* a hotel or collective residence where the guests or residents are offered games of chance;
- c* the headquarters or premises of a company or association where games of chance are held; and
- d* an establishment intended for the operation of games of chance, even if its purpose is disguised.

Games of chance are treated as misdemeanours, which are recognised by law as offences punishable by minor penalties (Article 61 of Law No. 9,099/95). In other words, a misdemeanour is a less offensive crime when compared to a criminal violation of Brazilian

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5 Clóvis Beviláqua, *Direito das Obrigações*, third edition (1931).

6 Pablo Stolze Gagliano and Rodolfo Pamplona Filho, *Novo Curso de Direito Civil*, Volume 4, São Paulo, Saraiva (2012), pp. 597–598.

law. The purpose of using the term 'misdemeanour' is to implement the 'moral police', which, according to Professor Humberto José da Nova, includes 'safeguarding morality' in order to 'prevent certain illegal and vicious acts, or defend certain moral sentiments regarded as indispensable to harmonious social coexistence, the effects of which are harmful to the interests of the collectivity'.<sup>7</sup>

Contrary to this, 'games of skill' are those whose results depend on ability of the player, more than on luck. These are legal.

'Lotteries' are defined by Article 51 of the Misdemeanour Law as the operation of payment of prizes depending on the result of the draw of tickets, lists, coupons, vouchers, signs, symbols or similar means.

Article 51 of the Law prohibits the operation or promotion of unauthorised lottery games in Brazil, including the distribution of foreign lottery tickets in the country. The Brazilian numbers game *Jogo do Bicho* ('the animal game'), which is similar to a lottery, is also prohibited.

Horse race betting is regulated by Law No. 7,291 enacted on 19 December 1984 and its 1988 regulation, Decree No. 96,993.

Finally, contest regulation is subject to federal jurisdiction in Brazil. Therefore, there is equal legal treatment in all of the 26 states and the Federal District. In Brazil, whenever a contest is held to promote the sale of products or to promote brands, it is deemed as a prize promotion, subject to Law No. 5,768, of 20 December 1971 and Decree No. 70,951 of 9 August 1972. The following ordinances also apply:

- a* Ordinance MF 422 of 18 July 2013 establishes the cases in which contests are not deemed as exclusively artistic, cultural, sportive or recreational for free prizes or awards distribution purposes.
- b* Ordinance MF No. 41 of 19 February 2008 regulates the free distribution of prizes for advertisement purposes, when performed by raffle, gift certificates, contests or similar operations.

The four types of free distribution of prizes to consumers are outlined in more detail below:

- a* Raffle: raffling elements are distributed, numbered in series, and those to be awarded are defined based on the results of the extraction of the Federal Lottery or on a combination of numbers from such results.
- b* Gift certificates: gift certificates are randomly hidden inside a product or the product's respective package. The gift certificate will be exchangeable for the prizes in the exchange stations.
- c* Contests: contests are based on forecasts, calculations, intelligence testing, games of skill or competitions of any nature.
- d* Similar operation: type conceived from combination of factors suitable to each one of the other types of prize promotion, preserving the original concepts for qualifying competitors and verifying the winners. It may be presented as 'Similar to Contest', 'Similar to Gift Certificate' and 'Similar to Raffle'.

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<sup>7</sup> Humberto José da Nova, 'Comentários à Lei das Contravenções Penais. Das contravenções relativas à polícia de costumes', *Anais do 1º Congresso Nacional do Ministério Público*, Volume 6. Rio de Janeiro, Imprensa Nacional, (1943), p. 149.

Contests for advertising purposes must be authorised by the Ministry of Finance, either by Caixa Econômica Federal (Caixa), Brazil's largest state-owned public bank that is under the supervision of the Ministry of Finance, or by the Secretariat of Economic Monitoring (SEAE), depending on the company's activities.

In order to avoid fraud or confusion between cultural contests and prize promotions, the Brazilian Ministry of Treasury has defined some procedures to assess whether a contest is considered to be a prize promotion or not. Ministerial Ordinance No. 422 of 18 July 2013 sets forth the cases in which a contest loses its exclusive artistic, cultural, sportive or recreational aspect and becomes a prize promotion (subject to the applicable rules and previous authorisation):

*Article 2. If least one of the following elements is present, to the extent it sets the aim of commercial promotion, the contest shall not be deemed as exclusively artistic, cultural, recreational or sportive:*

*I – advertising of the sponsors, of third parties, or of any of their products or services, on the disclosure materials by any channel or means, except for the mere identification of the contest sponsor;*

*II – trademark, name, product, service, activity or other identification element of the sponsor or of any third party in the material to be produced by the contestant, on the mechanics of the contest, or in the name or advertising of the contest;*

*III – presence of any element of chance or any payment by the contestants, at any stage of the contest;*

*IV – mandatory acquisition or use of any good, right or services by the contestants or winners;*

*V – contestant or winner exposure to products, services or brands of the sponsor or a third party, in any media;*

*VI – guessing;*

*VII – promotion of the contest on the sponsor's third parties' product packaging;*

*VIII – mandatory data filling, poll answering or any kind of advertising acceptance;*

*IX – award that involves the sponsor's product or service;*

*X – contest held in social network, permitted only its advertising in that media;*

*XI – contest held on TV, pursuant paid enrolment; and*

*XII – linking to events and commemorative dates, as sports championships, Mother's day, Christmas, Valentine's day, Father's day, Children's day, Anniversary of State, Municipality, or the Federal District and other similar hypotheses.*

*Contests are equally not deemed as exclusively artistic, cultural, sports or recreational when the registration or participation is:*

*I – made through phone calls or Short Message Service-SMS offered by a mobile phone operator;*

*II – subject to the due payment of any product or service offered by the sponsor or a third party; or*

*III – restricted to the sponsor's or third party's clients.*

## **ii Gambling policy**

As a rule, gambling has been prohibited in Brazil since 1946, when the last casino permits were cancelled. A number of scholars believe the gambling prohibition in Brazil was a reaction to the industrialisation of the country, because of the need to make free men dedicate their time to work and not to leisure. This, together with the religious belief that 'in the sweat of thy face shalt thou eat bread', caused gambling to be seen as something negative. However, this belief is no longer socially widespread in Brazil.

There is, however, a general perception that gambling activities in Brazil are a cover for money laundering, and that gambling activities are operated by criminal organisations. This derives from the fact that, despite the general prohibition currently in place, bingo halls, slot machines and *Jogo do Bicho* can be easily accessed in Brazil.

### **iii State control and private enterprise**

Poker and other games of skill, as well as social games, can be operated by private entities. These activities do not require any specific licence.

Horse race wagering is restricted to non-profit entities that own the racetracks, duly authorised by the Ministry of Agriculture, Livestock and Food Supply. These entities may appoint agents to facilitate wagering on their behalf, and can also hire private suppliers, which are not subject to licensing or any specific regulation.

Lotteries can only be state-owned. Caixa was granted the control of the lotteries as a result of Decree No. 50,954 of 14 July 1961, which cancelled all lottery licences granted to the private sector.

In addition to Caixa, only the states that had their own lotteries running when Decree-Law No. 204 of 27 February 1967 was enacted are authorised to run their own lotteries. These lotteries are:

- a* Loteria de Paraíba – Lotep;
- b* Loteria de Rondonia – Lotoro;
- c* Loteria de Ceará – Lotece;
- d* Loteria do Pará – Loterpa;
- e* Loteria de Rio de Janeiro – Loterj;
- f* Loteria do Rio Grande do Sul – Lotergs;
- g* Loteria de São Paulo;
- h* Loteria Social de Alagoas;
- i* Serviço de Loteria do Estado do Paraná – Serlopar;
- j* Loteria de Minas Gerais – Loteria Mineira;
- k* Loteria do Estado do Distrito Federal;
- l* Loteria do Estado do Mato Grosso do Sul;
- m* Loteria do Estado do Pernambuco;
- n* Loteria do Estado do Piauí;
- o* Loteria do Estado de Goiás; and
- p* Loteria do Estado do Mato Grosso – Lemat.

Federal and state lottery operators (i.e., Caixa and the state's equivalent entities) may contract suppliers by means of public procurement. There is not any specific licence requirement for these suppliers. The federal government is in the process of organising the public bid for privatisation of instantaneous lotteries (sweepstakes).

### **iv Territorial issues**

Starting in 1993, when bingo and slot machines were legalised, the state lotteries started to develop new gaming products, issuing authorisations for bingo venues, slot machine parlours and even online gaming based on state laws that allowed such activities in the territory of each state. Only in 2007 did the Brazilian Supreme Court definitely rule that states and municipalities could not legislate on gambling. For this purpose, a Binding Decision (Binding

Decision No. 2) that has to be followed by lower courts established that: ‘Any state or district law or legislative act that regulates raffles and consortiums, including bingo and lotteries, is unconstitutional.’

In 2009, however, when faced by a claim that the State Lottery of Rio de Janeiro’s expansion towards keno-style gaming was unconstitutional,<sup>8</sup> one judge from the same Supreme Court declared that state lottery regulations enacted before Binding Decision No. 2 of 6 June 2007 are valid.

#### **v Offshore gambling**

A legal loophole currently allows offshore operators to offer their gambling products to Brazilian citizens. One of the general rules about contracts in the Brazilian Law is that a contract by and between absent parties is deemed executed in the place of the proponent. This is set forth by Article 9, Paragraph 2 of the Law of Introduction to the Brazilian Rules of Law (Decree-Law No. 4,657 of 4 September 1942) and repeated in Article 435 of the Brazilian Civil Code.

As a consequence, if an offshore operator’s website is hosted in another jurisdiction where gambling is authorised, the contract between the Brazilian client and that operator is valid and subject to the operator’s jurisdiction’s law. This has some legal consequences in Brazil regarding consumer protection laws and money evasion, the latter with potential criminal aspects. So far, however, there have not been any attempts by the Brazilian government to bring any action against foreign operators.

## **II LEGAL AND REGULATORY FRAMEWORK**

### **i Legislation and jurisprudence**

According to the Criminal Contravention Act, games of chance are prohibited in Brazil. Any form of gambling activity that has not been expressly legally authorised may be considered illegal under the scope of the Act and, therefore, anyone carrying out such an activity may be prosecuted. Decree Law No. 50,954 of 14 July 1961 establishes Caixa’s monopoly on lotteries, and Law No. 7,291 of 19 December 1984 and Decree Law No. 96,993 of 17 October 1988 regulate horse race betting.

### **ii The regulator**

Caixa holds the monopoly on the regulation and operation of federal lotteries. State lotteries must comply with the gaming standards set forth by Caixa, and may not create new gaming products.

The Ministry of Agriculture, Livestock and Food Supply is the entity responsible for the regulation of horse racing.

Poker, recognised as a sport by the Ministry of Sports, is not regulated. Neither are social games nor any other kind of games of skill.

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8 Rcl 9134 – Rio de Janeiro, Federal Supreme Court, Min. Ellen Gracie. Judgment dated 15 February 2009. Accessed on 7 April 2017. Available at [www.stf.jus.br/portal/processo/verProcessoAndamento.asp?numero=9134&classe=Rcl&codigoClasse=0&origem=JUR&recurso=0&tipoJulgamento=M](http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?numero=9134&classe=Rcl&codigoClasse=0&origem=JUR&recurso=0&tipoJulgamento=M).

The free distribution of prizes is regulated by the Ministry of Finance and is subject to previous authorisation by Caixa or by the Secretariat for Economic Monitoring (SEAE), depending on the operator.

### **iii Remote and land-based gambling**

There is not any distinction between online gambling and bricks-and-mortar gambling for horse racing, provided that the general wagering plan expressly states the possibility of both. For the lotteries, Caixa does not allow their points of sale to accept remote bets.

### **iv Land-based gambling**

Land-based gambling in Brazil is restricted. Caixa has licensed over 13,000 lottery points of sale that are privately operated with permission (small venues that also operate as bank assistants, accepting payments of general services bills). Jockey clubs have their own agencies and agents (around 200), that are authorised to accept wagers on local and international races. Poker has become very popular in Brazil and there are many poker clubs open in the largest cities.

### **v Remote gambling**

Brazil's federal legislation does not contain any provision related to online gambling, specifically. Horse racing entities already offer bets online in Brazil and Caixa only offers online betting for their account holders. The majority of the remote gambling activities in Brazil involve offshore operators, mainly sports betting and bingo.

## **III THE LICENSING PROCESS**

### **i Application and renewal**

The application for a horse racing gambling licence should be made before the Ministry of Agriculture. The applicant must be a non-profit entity legally incorporated in Brazil, in ownership of a racetrack, and also needs to demonstrate the technical and economic viability of the weekly racing schedule and the floor plan of the race field. That entity must present the draft of a general betting plan (which includes the rules applicable for each game to be run by the operator, such as prize, ticket value, minimum and maximum betting amounts, and payout).

Horse racing entities must also apply for their agents' licences before the Ministry of Agriculture, Livestock and Food Supply. This application must be made by the authorised horse race entity, which must be entirely responsible for any and all acts of the agent. The agent licence is granted to the agent (person or company) to facilitate wagering only at the specified venue. Horse racing personnel and suppliers do not need to apply for licences and are not regulated.

Both authorisations, for the horse racing entities and their agents, are valid without any time limitation. Revocation may occur when there is a non-observance of rules and procedures after the due administrative process.

**ii Sanctions for non-compliance**

Article 22 of Law No. 7,291 of 19 December 1984 and Articles 91–97 of Decree-Law No. 96,993 of 17 October 1988 define the penalties applicable to horse race betting operators in breach of those regulations:

- a* penalty;
- b* fine; and
- c* revocation of licence.

Article 50 of the Misdemeanour Law establishes that the operation of games of chance in a public place or in a place available to the public is subject to imprisonment, from three months up to one year, and a fine. In addition, introducing foreign lotteries in Brazil with the objective of sale, results in a penalty of a prison term of between four months and one year, and a fine (Article 52).

Taking part as a player in illegal gambling may result in a fine. As Article 50 of the Misdemeanour Law has been recently amended by Law No. 13,155 of 4 August 2015, it is now the case that players and affiliates involved with online or offline illegal gambling are subject to a fine ranging between 2,000 reais and 200,000 reais.

The penalty for advertising unlicensed lotteries is a fine. According to Article 50 of the Advertising Self-Regulation Code of the National Council for Advertising Self-Regulation (CONAR), any advertising that ‘induces to criminal or illegal activities’ is subject to penalties that may include a warning, a recommendation to modify the advertisement and a recommendation to suspend it.

Those who operate international payments to offshore gaming companies without the due reporting to the Brazilian Central Bank (and consequent payment of taxes) may also be held liable for unreported remittance of funds, according to Article 22 of Law No. 7,492 of 16 June 1986, subject to imprisonment from two to six years and a fine, plus the payment of all due taxes.

**IV WRONGDOING**

The Brazilian Civil Code classifies bets as contracts, therefore only those over 18 years of age are legally allowed to gamble. This is also set forth in the Brazilian Child and Adolescent Protection Statute, which rules that venues where billiards and snooker are played, and venues where bets are made, should not permit children and teenagers to enter.

Although they are not specially aimed at gambling activities, general advertising rules in Brazil that may have an impact on gambling are included in Decree-Law No. 57,690 of 1 February 1966 and Decree-Law No. 4,563 of 31 December 2002, and anti-money laundering rules in Law No. 9,613 of 3 March 1998 and Law No. 12,846 of 1 August 2013.

Article 1 of Law No. 9,613/1998 defines the crimes related to laundering or concealment of assets, rights and valuables as:

*Concealment or dissimulation of the nature, origin, location, availability, handling or ownership of assets, rights or valuables directly or indirectly originated from criminal activities.*

According to Article 10 of the same law, all companies that pay prizes are obligated to identify their clients and keep records for at least five years. Brazil has been a member of the Financial Action Task Force since 2000. Brazil has also been a member of the Financial Action Task Force of South America since 2000.

Law No. 12,846/2013 is the anti-corruption law in Brazil, which focuses on companies (either Brazilian or foreign) with operations in Brazil. This law created civil and administrative responsibilities, as well as criminal responsibilities, and may be compared to the UK Bribery Act.

## **V TAXATION**

Lotteries are not taxed, since they are owned and operated by the state. Their revenues, however, have pre-established social destinations set forth by law, such as funds for sports, education, health, culture, etc.

Jockey clubs, as non-profit entities, pay the ordinary corporate taxes (with exception to the taxes on income), and the contribution to the Coordination Commission for National Horse Breeding of 1.5 per cent of the adjusted net win (wagers minus prizes for winning bets minus prizes for horsemen).

The gamblers are also taxed. As per Article 676 of Decree Law No. 3,000 of 26 March 1999, all prizes paid for lottery and horse racing winnings are subject to an exclusive withholding income tax of 30 per cent of the prize amount. Poker prizes, on the other hand, are subject to a different income tax withholding. If there is a labour relationship between the winner and the legal entity promoting the event, or if the winner is not resident in Brazil, the income tax to be withheld is 25 per cent. If there is not any employment bond and the winner is resident in Brazil, the withholding tax will be 15 per cent.

## **VI ADVERTISING AND MARKETING**

Article 57 of the Misdemeanour Law expressly rules that publishing, even if indirectly, the operation or results of unauthorised lotteries in newspapers, radio or any other format is a contravention, punishable by a fine. As to other forms of gambling, there is no express reference to advertising restrictions in the criminal law.

Decree-Law No. 57,690 of 1 February 1966 and Decree-Law No. 4,563 of 31 December 2002 regulate advertising in Brazil and, according to the latter, all advertisement in Brazil must comply with the rules set forth by the Standard Rules Executive Council (CENP).<sup>9</sup> This council is responsible for regulating the commercial relations between advertisers and agencies, while CONAR is responsible for ensuring ethics in advertising content.

Both CENP and CONAR are non-governmental organisations formed by members of the advertising industry to define their own statutes and codes. CONAR's Self-Regulation Code also includes a general rule that advertisements should not contain anything that 'induces criminal or illegal activities' (Article 21).

Based on this general rule, many gaming and poker companies have faced difficulties trying to advertise in Brazil. In 2009, CONAR prohibited Full Tilt Poker from advertising

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<sup>9</sup> CENP, Standard Norms for Advertising Activities, São Paulo, 16 December 1998. Accessed on 7 April 2017. Available on [www.cenp.com.br/PDF/NomasPadrao/Normas\\_Padrao\\_Ing.pdf](http://www.cenp.com.br/PDF/NomasPadrao/Normas_Padrao_Ing.pdf).

on the Discovery Channel. That decision was based on the assumption that poker was a game of chance, illegal in Brazil. After deliberation, CONAR decided that poker is a game of skill, and allowed its advertising. In that same year, CONAR also prohibited Sportingbet from advertising in Brazil. This prohibition was upheld by the Brazilian courts after it was challenged by Sportingbet.

As a rule, there has not been any restriction for advertising social gaming websites (the ‘.nets’), since their activity is legal in Brazil.

## **VII THE YEAR IN REVIEW**

As far as the regulation of gaming in Brazil is concerned, 2015 was probably the busiest year for over a decade, since the shutdown of the industry in 2004. 2016, on the other hand, was a great disappointment.

After five months of lengthy discussions, Law No. 13,155 was approved on 4 August 2015 by Congress, authorising the operation of fixed-odds sports betting (run by Caixa) by licensed horse racing entities and by licensed private companies.

The former president, Dilma Rousseff, however, vetoed the articles of the aforementioned law that authorised sports betting, arguing that ‘the creation of this fixed-odds lottery would require a more comprehensive regulation in order to ensure legal and economic security, appropriate levels of fraud prevention and tax evasion control. Furthermore, the law did not provide any mechanism to prevent negative social impact.’

Despite the veto, and mainly because of Brazil’s pressing need to find additional sources of revenue for the government, the president held a meeting with a number of Congress leaders on 14 September 2015 in order to assess if, from a political standpoint, gaming regulation could be reconsidered and made viable. This meeting was widely published in the media and the result was surprisingly positive.

As a result, the government communicated its openness to regulate the gaming industry to Congress, which started working on the basis of pre-existing bills of law on the matter.

On 30 September 2015, the President of the Senate, Renan Calheiros, included Bill of Law 186/2014,<sup>10</sup> drafted by Senator Ciro Nogueira, among the topics discussed by the Special Commission for National Development (CEDN), which led to a fast-track procedure to obtain approval for strategic bills, which are needed for the overall improvement of the economy (the ‘Agenda Brazil’).

On 28 October 2015, the Chamber of Deputies created another Special Commission to draft the Brazilian Gaming Regulatory Framework. Since then, the Commission has been holding weekly meetings and hearings.

On 9 December 2015, the CEDN Commission approved the substitutive Bill of Law presented by Senator Blairo Maggi and on 10 March 2016 the Bill of Law received five new amendments, which means it can be voted on in the Senate.

After extensive discussion, on 30 August 2016, the Commission of the Deputies approved the report on the new draft of Bill 442/1991, which was sent to the Chamber of Deputies’ plenary to be scheduled for vote. Also, in August, Bill of Law 186/2014 was returned to the Senate and its draft was replaced by a new version, presented by Senator Fernando Bezerra, its new rapporteur.

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10 Federal Senate, Legislative Activity. Bill of Law No. 186 of 2014. Accessed on 7 April 2017. Available at [www25.senado.leg.br/web/atividade/materias/-/materia/117805](http://www25.senado.leg.br/web/atividade/materias/-/materia/117805).

Senator Fernando Bezerra presented several versions of the draft, the latest on 4 November 2016. On 9 November, the Commission of the Senate finally approved Bill of Law 186/14, and on 14 December a request from Senator Magno Malta was approved. The Bill will now be analysed by the Constitution and Justice Commission (CCJ) of the Senate.

On 13 December 2016, several experts were invited to speak at the General Commission of the Chamber of Deputies about gaming regulation.

During the ICE Totally Gaming Conference in London in February 2017, the SEAE confirmed that officials were drafting a Bill of Law to be presented by the government during the first half of the year, to regulate sports betting.

In the state of Rio Grande do Sul, in the south of Brazil, a court decision has stated that gambling is not prohibited in that state because the prohibition set out in Article 50 of the Misdemeanor Act of 1941 would be unconstitutional. The public attorney has appealed that decision and now the case is pending judgment by the Federal Supreme Court,<sup>11</sup> where it has been granted ‘general repercussion’ effects, which means that the decision of this case will be binding to all other similar cases in the country.

Until the judgment is released, the effects of the prior decision from the Rio Grande do Sul court remain in force. As a result, many bingo halls are opening in the state, without any regulation. This lack of regulation may result in political pressure on the state, but depending on how the operators behave, it may create the opposite effect.

Once a bill of law is approved in the floor of one of the houses, it will have to be approved by the other house. If amended, it will need approval by the house of origin before being subject to the President’s sanction. We do not expect this process to be completed until the end of 2017. This delay is a consequence of the unprecedented political crisis that has arisen from the corruption scandals involving several important politicians, including the former and the current presidents. The current President, Michel Temer, was trying to push the social security, labour and tax reforms for legislative approval in the first semester of 2017 and the gaming bill was supposed to be voted on in the second semester. Now, because of the latest scandal involving the President and several congressmen, there may be another impeachment process that could delay the gaming regulation even further.

	Bill of Law 442/1991	Bill of Law 442/1991
Origin	Chamber of Deputies	Senate
Status	Approved by the Special Commission	Approved by the Special Commission
Next steps	Voting in the Chamber to be scheduled	Pending approval by the CCJ
Modalities	<ul style="list-style-type: none"> <li>• Casinos</li> <li>• Bingos</li> <li>• Fixed-odds sports betting</li> <li>• VLTs</li> <li>• Online gaming</li> <li>• Lotteries</li> <li>• Jogo do Bicho</li> </ul>	<ul style="list-style-type: none"> <li>• Federal and state lotteries</li> <li>• Casinos</li> <li>• Bingos</li> <li>• Fixed-odds sports betting</li> <li>• Online gaming</li> <li>• Jogo do Bicho</li> <li>• Sweepstakes</li> </ul>

11 Extraordinary Appeal 966.177 RG/RS.

	Bill of Law 442/1991	Bill of Law 442/1991
Licences	<ul style="list-style-type: none"> <li>• Casinos: public bid for concession – 30-year term, renewable for equal terms</li> <li>• Bingos: authorisation for 20 years, renewable for one equal term</li> <li>• Jogo do Bicho: 5 million reais minimum paid-up capital</li> <li>• Unlimited time licence</li> <li>• Lotteries: states may have bids for concession of lottery services with a 20-year term</li> <li>• Online gaming: not defined</li> <li>• VLT: 20 million reais minimum paid-up capital. Type of licence not defined</li> </ul>	<ul style="list-style-type: none"> <li>• Caixa and its subsidiaries will be authorised to operate all gaming modalities with exception to Jogo do Bicho</li> <li>• Private operators will have to bid for concessions for all gaming modalities, with exception to Jogo do Bicho</li> <li>• Jogo do Bicho operators only have to be registered at the state level</li> <li>• Concessions will be granted for up to 25 years, renewable for one equal term upon payment</li> </ul>
Requirements	<ul style="list-style-type: none"> <li>• Operator must be a company incorporated under the laws of Brazil, with headquarters and management in the country</li> <li>• Technical capacity</li> <li>• Fiscal regularity</li> <li>• Financial and economic integrity</li> <li>• Final individual shareholders must be identified</li> <li>• Shareholders, directors and managers shall not have a criminal record</li> <li>• Gaming incorporations shall not be shareholders, managers or directors</li> </ul>	<ul style="list-style-type: none"> <li>• Operator must be a company incorporated under the laws of Brazil, with headquarters and management in the country</li> <li>• Technical capacity</li> <li>• Financial integrity</li> <li>• Fiscal regularity</li> <li>• Final individual shareholders must be identified</li> <li>• Shareholders, officers and managers cannot have been convicted for crimes in the past eight years</li> <li>• Caixa Económica Federal is authorised to operate all gaming modalities, directly or by its subsidiaries</li> <li>• All gaming licences, with exception to Jogo do Bicho, will be under the concession model, after a bid for licence</li> <li>• The invitation for bid will set forth the term of the concession, location, minimum paid-up capital and other requirements</li> <li>• Special registration at the Federal Revenue Office</li> </ul>
Casinos	<ul style="list-style-type: none"> <li>• One casino in states with a population of up to 15 million; two casinos in states with population between 15 and 25 million; and three casinos in states with population is larger than 25 million</li> <li>• Only one licence per state for each economic group and up to five licences in the national territory</li> <li>• Minimum size and number of rooms requirements based on the population of the state</li> <li>• Bid for licences, valid for 30 years, renewable for equal terms</li> <li>• Slot machines must have a minimum payout of 80%</li> </ul>	<ul style="list-style-type: none"> <li>• Two-fifths of the casinos must be located in the north, north-east and centre-west regions</li> <li>• Casinos can be located in cities determined by the National Plan of Tourism, in the jockey clubs located in cities with more than 300,000 inhabitants</li> </ul>
Bingos	<ul style="list-style-type: none"> <li>• Allowed at bingo halls, jockey clubs and soccer stadiums</li> <li>• Minimum size and paid-up capital requirements based on the population of the city</li> <li>• Only video-bingo machines are allowed, with a minimum payout of 80%. Slots are not permitted</li> <li>• Up to 500 machines per bingo hall and 300 in soccer stadiums and jockey clubs</li> <li>• Licences valid for 20 years, renewable for equal terms</li> </ul>	<ul style="list-style-type: none"> <li>• Authorised only in cities with population over 200,000, with one bingo hall per 200,000 inhabitants</li> <li>• Only video-bingo machines are allowed. Slots are not permitted</li> <li>• Maximum market concentration of 10% per economic group</li> </ul>
Fixed-odds sports betting	<ul style="list-style-type: none"> <li>• Licensing subject to further regulation</li> <li>• Central server must be in Brazil</li> </ul>	<ul style="list-style-type: none"> <li>• Authorised</li> <li>• Details subject to further regulation</li> </ul>
VLTs	<ul style="list-style-type: none"> <li>• Called BR1 machines</li> <li>• Minimum payout of 80%</li> <li>• Minimum paid-up capital of 20 million reais</li> <li>• Minimum of 2,000 machines in stock</li> <li>• Maximum 10 machines per agency or five machines in other venues</li> </ul>	Not applicable
Online gaming	<ul style="list-style-type: none"> <li>• Licensing subject to further regulation</li> <li>• Central server must be in Brazil</li> </ul>	<ul style="list-style-type: none"> <li>• Only Caixa Económica Federal and its subsidiaries can operate online gaming</li> </ul>
Lotteries	<ul style="list-style-type: none"> <li>• Only federal and state-owned lotteries are authorised</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>
Jogo do Bicho	<ul style="list-style-type: none"> <li>• Minimum paid-up capital requirement</li> <li>• States will authorise and control</li> </ul>	<ul style="list-style-type: none"> <li>• Subject to further regulation</li> </ul>

	Bill of Law 442/1991	Bill of Law 442/1991
Poker	<ul style="list-style-type: none"> <li>Classified as a game of skill</li> <li>Not subject to the law</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable</li> </ul>
AML	<ul style="list-style-type: none"> <li>Classified as a game of skill</li> <li>Not subject to the law</li> </ul>	<ul style="list-style-type: none"> <li>All operations must be identified</li> </ul>
Taxation	<ul style="list-style-type: none"> <li>PIS/COFINS social contributions:               <ul style="list-style-type: none"> <li>- 3.65% on gross gaming revenue (GGR)</li> <li>- Ordinary corporate taxes (<math>\pm 34\%</math> of the net profit)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>PIS/COFINS social contributions:               <ul style="list-style-type: none"> <li>- 9.25% on GGR</li> <li>- Increased corporate taxes (<math>\pm 45\%</math> of the net profit)</li> <li>- Inspection fee (<math>\pm 0.5\%</math> of payout)</li> <li>- Services tax (2%–5% on GGR)</li> </ul> </li> </ul>
Tax on player's winnings	<ul style="list-style-type: none"> <li>15% withholding tax on actual gains at the time of the withdrawal or payment</li> </ul>	<ul style="list-style-type: none"> <li>30% withholding tax on net prizes at the time of the withdrawal or payment, which must be made within 72 hours</li> </ul>
Responsible gaming	<ul style="list-style-type: none"> <li>Obligation to create a responsible gaming plan</li> <li>National Registration of Problem Gamblers</li> </ul>	<ul style="list-style-type: none"> <li>Subject to further regulation</li> </ul>
Regulatory agency	<ul style="list-style-type: none"> <li>The federal government must to enact another law creating the agency</li> </ul>	<ul style="list-style-type: none"> <li>Not included. The control, regulation and inspection will be performed by the Ministry of Finance</li> </ul>

## VIII OUTLOOK

Hopes are high for gambling regulation in Brazil in 2017. Unfortunately, political turmoil, resulting from the impeachment of President Dilma Rousseff and several corruption scandals involving politics, has complicated matters.

As it is a sensitive matter, gambling provokes passionate discussions and any decision on its regulation, especially at this point in time, will take into consideration not only the financial aspects but also the political repercussions. As the social security and labour reforms are now a priority for the government, it will probably not sponsor any controversial matters, including gambling, until those reforms are approved.

Lotex, an instant lottery, was created by Law No. 13,155 of 4 August 2015, and Law 13,262 of 22 March 2016 redefined the object of Lotex to include events of great popular appeal, commemorative dates, cultural references, licensing of brands or characters, and other graphic and visual elements in order to increase its commercial appeal. This change was significant and represents a major advance for instant lotteries in Brazil.

In Brazil, an instant lottery is limited to the so-called 'scratch card' sector. However, instant lotteries encompass various types of games and bets that are common in other countries, but non-existent in Brazil. The aim of the government is to encourage these other modalities that are still unexplored, in order to further increase the profitability of this economic activity.

The first step for the privatisation of Lotex was the issuance of Law No. 13,262 of 22 March 2016, which authorised Caixa Econômica Federal to set up Caixa Instantânea S/A, a wholly owned subsidiary, to manage and operate Lotex throughout the country.

The second step was the designation of the Brazilian Development Bank (BNDES) as responsible for executing and monitoring the privatisation process of Lotex – replacing Banco do Brasil, which had originally been assigned to this task. In this context, BNDES issued a bidding notice at the end of 2016 for the contracting of specialised technical services necessary for the privatisation of Lotex. The purpose of this procurement process was (1) economic and financial evaluation of Caixa Instantânea S/A, (2) analysis of the regulatory framework of the lottery sector, (3) elaboration of the privatisation model, (4) preparation of the business plan,

(5) proposition of the regulatory model, and (6) legal advice and other services necessary for the privatisation process. The bidding was completed and the BNDES signed an 18-month contract with the Consortium led by Ernst & Young.

At the time of writing, the privatisation of Lotex is pending economic and financial evaluation, the number of licences has not been defined and the design of the bidding process has not been established. The expectation of the government and the operators of the sector is that in 2017 the bidding notice for the privatisation of Lotex will be launched.

In the meantime, several international companies are trying to position themselves in Brazil.

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