
Developments in Swiss Gaming Law

By Dr. Andreas Glarner, Partner and Dr. Alexandra Körner, Senior Legal Associate, MME Legal | Tax | Compliance



Dr. Andreas Glarner



Dr. Alexandra Körner

In 2012, a revised article concerning the regulation of gaming and gambling was introduced to the Swiss Federal Constitution. In order to implement and specify this new constitutional provision, the Swiss parliament had been drafting a new law on Gaming since 2014. On 29 September 2017, the two chambers of the Swiss parliament eventually agreed on a wording and passed the new Money Gaming Act in the final vote. The planned new law replaces the current framework that regulates casino games and bets/lotteries with a set of two different laws: The Gaming Act and the Lottery Act.

1. Current Swiss gaming legislation

As of today, the Federal Gaming Act (FGA¹) is the main federal legal basis for any cash games of luck in Switzerland. Any other games, such as lotteries and betting are governed by the Swiss Lottery Act (SLA²). Skill games and prize competitions such as tombolas do not fall under these federal laws, but are regulated by cantonal law.

The offering of casino games is subject to a licence, which is issued by the Federal Council. 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.

Lotteries of any kind and lottery-like undertakings (such as snowball, hydra, gella, multiplex, house draws, auctions as lottery-like events and internet-based lotteries) are generally prohibited. Not-for-profit lotteries or lotteries for 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.

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 totalizator (pari-mutuel) at local live sports events with a special licence. The lottery and betting sector is primarily enforced by the Inter cantonal Betting Board (Comlot).

2. New Swiss gaming legislation

The new Money Gaming Act aims at replacing this framework with two different laws by one single Act. 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 legislation: It removes the existing ban on online gambling but introduces IP blocking measures for foreign online gambling websites. It legalises poker tournaments outside casinos under certain conditions and provides for a higher non-taxable threshold for wins from money games outside casinos.

2.1 Online gambling

Under the planned Money Gaming Act, holders of terrestrial casino licences can apply for an extension of the licence in order to be able to offer casino games online. For the extension of an existing terrestrial concession to online gambling services, the applicant will have to establish the commercial viability of the planned service.

As the possibility to extend the licence only applies to holders of terrestrial licences, foreign providers of online games do not have the possibility to enter into the Swiss gambling market without partnering with a local terrestrial licence holder. There is no licence requirement for suppliers to operators of casino games. However, suppliers can only provide their services to licenced operators and the collaboration is subject to approval of the Swiss

1 SR 935.52.

2 SR 935.51.

authorities. Those will only approve such collaboration if the Swiss operator provides evidence that the (foreign) supplier has a “good reputation”. The threshold to be met is currently unclear. In particular, it is not clear whether the authorities will request that the international operator or supplier must never have provided services into Switzerland or that it commences blocking its services for Swiss users.

2.2 IP blocking measures

The Money Gaming Act stipulates that the Swiss Federal Gaming Board and the Comlot will keep blacklists of non-licensed foreign providers of casino game websites. Only websites operated by operators domiciled abroad or disguising their domicile are blacklisted. The access to these websites for players situated in Switzerland has to be blocked by the internet providers. The legislative materials state that mainly domain names will be listed. However, as the wording of the Money Gaming Act is very open, the use of other technical means to block foreign gaming websites is not excluded. Details of the process how a domain name will be blocked are yet to be established and will be legislated in an ordinance.

The introduction of the blocking measures was heavily disputed in the legislative process given that technical blocking measures strongly interfere with personal rights and restrict the rights of individuals to freely access the internet. Nevertheless, the majority of the Parliament eventually followed the argument that such measures are required to protect Swiss players from unregulated foreign gambling services. This 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.

2.3 Small-scale poker tournaments outside casinos

The Money Gaming act legalises small-scale poker tournaments outside of casinos under certain conditions. A licence, which includes the following conditions, is required: Limited amount of participants,

limited buy-in as well as no risk of operator and public location. Further requirements are yet to be defined by the Federal Council in an ordinance.

2.4 Taxation of gains from money gaming

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. In its draft of the Money Gaming Act, the Federal Council eliminated this different tax treatment and provided for a tax exemption for all gains from money gaming. The two chambers of the parliament heavily discussed this tax exemption and finally agreed on a compromise. They decided that according to the new Money Gaming Act, gains from lottery and sports betting are taxed if they exceed CHF 1'000'000. Gains from online gaming are subject to income tax.

2.5 Player protection, advertising and manipulations

The Money Gaming Act provides for a stronger protection of players by implementing new requirements for both gaming providers and the cantons. The cantons need to implement strengthened measures to prevent gaming addiction and set up counselling facilities for people suffering from gambling addiction. Casinos and operators of large-scale games are obliged to implement appropriate safeguard measures, depending on the risk potential and the distribution channel of the respective game.

In addition, the Money Gaming Act includes additional provision to guarantee secure and transparent gaming operations including measures against manipulations of sports competitions. It also includes regulations on the advertising for money games.

3. Developments since September 2017

Swiss citizens have the opportunity to launch a public referendum if they oppose a new law. For a referendum to be successful, 50'000 signatures must be collected within 100 days following the publication of the proposed law. If the referendum is successful, the electorate can vote on the

disputed law. For the law to enter into force definitely, a (simple) majority of all the votes cast is needed.

After the publication of the Money Gaming Act, multiple non-party committees and several youth wings of political parties have launched the referendum, mainly because of the planned technical blocking measures. On 18 January 2018, 60'000 signatures were submitted to the Federal Chancellery. Consequently, the electorate will vote on the Money Gaming Act and this vote is scheduled to take place on 10th June 2018. If the Swiss electorate accepts the new Money Gaming Act, it is currently expected to enter into force beginning 2019. In case the electorate rejects the new act, the parliament will have to pass a revised new Gaming Act which is likely to delay the process of implementation.

Dr. Andreas Glarner looks after internationally oriented technology and industrial companies as well as internet and blockchain companies. He advises and processes in the areas of intellectual property law, unfair competition, advertising law, data protection, licensing, distribution and IT law. He also has extensive experience in compliance issues for casinos, e-payments, fintech and export controls. Andreas Glarner is the author of various publications in his fields of activity.

Alexandra Körner advises domestic and foreign clients on corporate law issues, the drafting of contracts and represents the interests of their clients in court, whereby the disputes she oversees predominantly in the areas of the Code of Obligations (in particular corporate and commercial law) as well as liability and insurance law come. In addition, she has special expertise in compliance matters in casino law.