

Legal Overview of the Spanish Online Gaming Market

By Xavier Muñoz



The Spanish gambling and betting market was regulated in 2011 by Law 13/2011 and a series of statutory regulations. There are currently around 50 operators offering their gambling and betting services in Spain.

Order HFP/1227/2017 was published last 16th December 2017 and opened a new licensing window which allows companies to apply for gambling and betting General Licences until 17th December 2018. Once this window period expires a new window will not be opened until three years later. Therefore, it is very important to assess this licensing opportunity now.

It is worth noting that the Spanish market is currently well organized from a regulatory point of view and operators have a clear framework for their business.

Spanish Licensing System

The offering of any gambling or betting activity in Spain is subject to obtaining a prior license. The Law foresees three types of licences: General Licence, Singular Licence and Authorisation.

General Licences: These licenses authorise operators to offer those games classified within the categories of Lotteries, Bets, Raffles, Contests and Other games. The licenses that can now be obtained are those for Bets, Other games and Contests.

These General Licences, according to Law 13/2011, shall be valid for ten years and may be renewed for an equal period of time.

In accordance to the regulations, those operators who provide their gaming services to customers and own a gaming platform will be required to obtain a license. However, those companies who “partially” undertake gaming activities will also be required to obtain a license if their income for such activity

is directly related to the revenue obtained from the gaming activity and at the same time, “undertake any commercial activity on gaming.”

This article also refers to those companies which will be considered “operator and co-organizer of the game.” In this sense, it refers to companies that manage the gaming platforms of which other operators are members or adhere to. In this case, we refer particularly to the networks of poker and bingo or other networks managed by a co-organizing company.

Singular Licences: These licenses can only be obtained by those operators who have previously obtained the corresponding General Licence above. That is the reason it is important not to miss the opportunity of obtaining the

General Licences if a company is interested in the Spanish market.

Operators holding a General License will be able to apply for any type of Singular Licences at any time in the future. Unlike General Licences, there is not a specific licensing window for Singular Licences as long as the company already has the corresponding General Licences.

Each Singular Licence must be granted under the umbrella of a General License as shown in Table 1 below.

BETS	OTHER GAMES	CONTESTS
Fixed odds sports betting	Roulette	Contests
Fixed odds horse betting	Poker	
Other fixed odds betting	Baccarat	
Pool sports betting	Black Jack	
Pool horse betting	Bingo	
Pool other betting	Complimentary games	
Exchange sports betting	Slots	
Other exchange betting		

There are 16 types of Singular Licenses and each one corresponds to a particular game. The Government passed specific orders regulating each and any different kind of game. Such orders regulate where and how these games can be offered, maximum amounts to be deposited and/or waged, costumer rights, publicity allowed, and so on.

These Singular Licenses shall be valid for five years, although in some cases a three year term is established and may be renewed for an equal period of time.

Authorisations: These must be obtained to carry out the activities corresponding to the previously indicated Singular Licenses but in an occasional and sporadic basis. These could be applied for at any time.

Finally, it is worth pointing out that the Spanish Directorate General for the Regulation of Gambling (“DGOJ”) is actively investigating and fining the offering of any illegal gambling and betting services in the territory of Spain, namely, operators which do not have a license.

Advertising And Sponsoring

Advertisement, promotion and sponsorship concerning gambling and betting activities shall be permitted, but only when these refer to gambling and betting activities duly licensed in Spain. Also such publicity will have to be in line with the particular allowance for advertising that each gaming operator will have in its license. Gambling licenses granted in other countries are not valid to offer, advertise or promote games in Spain.

Advertising gambling or betting activities from operators which do not hold the corresponding license is an illegal activity in Spain, subject to heavy fines which may be imposed by the DGOJ.

Advertising agencies, media channels, or Internet website editors are responsible for ensuring and checking, before publishing any advertisement or promotion, that the operator/advertiser is duly licensed and that such particular advertising is allowed in the frame of the operator’s license. Such prior check shall be done by means of the General Registry of

Gambling Licensees maintained by the DGOJ. In any case, if these media entities disseminate advertising from non-licensed operators they would also be responsible.

Additionally, these media entities may be formally requested by the DGOJ to stop the insertion of an illegal advertisement upon three days prior notice.

The new Law provides a wide definition of the persons or entities that could be liable, which comprises “any person or entity that performs any of the breaches provided by the Law, as well as any other that gives them support, advertise or promote them, or in any way obtain profit from them.”

The following are examples of gross breaches in the law, punishable with fines from Euro 100,000 to 1 million and suspension of the activity for up to six months:

To promote, sponsor or advertise games, or provide any intermediation service, when those offering the games lack the corresponding license, or when the games are advertised breaching the conditions and restrictions set out in the license or in the regulations, whatever media or channel is used for the advertising.

Failure to comply with information or termination requirements issued by the DGOJ.

A media owner and/or the advertising agency could be liable for these types of infringements, jointly with the gambling operator.

Tax Regime

Operators who organize and develop gaming activities are subject to the payment of gambling taxes.

The Law states that other entities may be held jointly responsible for the payment of taxes in case they have not duly checked that the gaming operator with whom they work holds the relevant licence. These jointly responsible entities can be the owners of the infrastructures, information service providers, those who offer gambling activities to Spanish residents and those who obtain profits from the gambling activities.

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Recognized by Best Lawyers 2018 as “Lawyer of the Year” in Spain (New Technologies).

Named by Who’s Who Legal amongst the Best Information Technology lawyers in Spain, in the 2017 Edition. His law firm, ECIJA, also awarded as ‘Best Law Firm in Gaming Law in Spain’ by Acquisition International Legal Awards due to the exceptional contribution of Xavier Muñoz to development of this practice.

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This shows that not only the operator will be held accountable and that any other company contracting with the operator must ensure that the operator holds the appropriate gaming licence.

The gaming tax varies depending on each type of game as we can see in Table 2 below.



TABLE 2

TYPE OF GAME	TAXATION
Fixed odds sports betting	25% on win
Fixed odds horse betting	25% on win
Fixed odds other betting	25% on win
Pool sports betting	22% on gross revenue
Pool horse betting	15% on gross revenue
Pool other betting	15% on gross revenue
Exchange sports betting	25% on operators' commissions
Exchange other betting	25% on operators' commissions
Contests	20% on the gross revenue
Other games (roulette, poker, baccarat, black jack, bingo, complimentary games, slots)	25% on the win
Draws and promotional games	10% of the value of the prize

It shall also be noted that an annual tax of 0.00075% on the gross income of the operator will have to be paid by all operators in the market.

State Lotteries

The state company of lotteries and bets ("SELAE"), and the Spanish national association for the blind ("ONCE"), are the operators appointed for the commercialisation of the national lottery games. The games that the SELAE and ONCE commercialise can be carried out by means of tickets, or through any other electronic, telephone or interactive means. These companies could also offer any of the other games available to other operators, subject to obtaining the corresponding license.

SELAE and ONCE's traditional games are exempt of gaming taxes and

VAT. Also, the prizes won by customers from these entities are exempt from their personal income tax up to an amount of Euros 2,500. When such amount is exceeded, personal income tax shall be paid at a 20% flat rate.

Punishing Regime

The law foresees gaming operators, as well as any other company which offers them support, publicity, promotion or which obtains profits from the illegal gaming activities, to be responsible for any breach of the law. This is a very wide definition, which may include any company which directly or indirectly participates in any way in the illegal gaming activity.

The DGOJ has authority to start the relevant punishing procedures and impose the corresponding fines. Other

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public bodies, such as the media and TV regulators and bodies from the autonomous regions, may also be competent to regulate within their area depending on the type of breach.

Those infringements are classified as:

Light infringements: these may be punished with a written warning and a fine of up to Euros 100,000.

Gross infringements: these may be punished with a fine ranging from Euros 100,000 to 1 million and the suspension of the gaming activity for up to six months.

Very gross infringements: these may be punished with a fine ranging from Euros 1 million to 50 million and the loss of the licence and the closure of any gaming activity.

It is expected that the DGOJ will act with forcefulness against any operator, media company or intermediary who benefits from its participation in any type of illegal game. It should be noted that any type of gambling activity not under the umbrella of a Spanish licence shall be illegal in Spain. ♣