

INTERNATIONAL

Legal Overview of the Spanish Online Gaming Market

By Xavier Muñoz Bellvehí



On May 27, 2011, the Spanish Gaming Law 13/2011 was approved. After that, a series of statutory regulations were developed, and on November 16, once all the main regulations had been passed, the Spanish Government published the official rules for the licensing administrative procedure (similar to a public tender). The deadline for the submission of the license applications was set for December 14, 2011, after which date no license applications would be accepted.

In the middle of the process above, on November 20, 2011, Spain went through a process of general elections and, as a result, a new party came into power (the conservative party, *Partido Popular*). The new Government is also in favour of liberalizing the online gaming market;

however, it will want to do certain things on its own way.

As an initial step, on December 30, the entrant Government issued some regulations stating that the punishing regime (which particularly affects those operators currently offering gaming services in Spain) would enter into force as of June 30, 2012, or at the time when the first license is granted.

This is a significant change from the prior date of January 1, 2012, for the punishing regime to enter into force. This change gives the new Government a six month extra period during which it will review all the license applications submitted, ensure the due homologation and certification of all gaming platforms, issue any pending regulation, and modify any particular aspects in the existing regulations.

Currently around forty operators have applied for their licenses. Those applications will be reviewed, and the licenses will be granted or denied during the upcoming months. The new Government expects to grant the first licenses by April 2012.

In spite of the tortuous Spanish licensing process, at the moment Spain has all the main regulations in place and has a quite well defined legal framework. Of course some issues are still pending, additional reg-

ulations are necessary, and the Spanish Gambling Regulator (“SGR”) will have to monitor and guide the market in many ways; however, in my opinion, operators have a reasonably clear framework to start their business. From a commercial point of view, they should put their efforts in rapidly understanding and making the best out of this framework.

SPANISH LICENSING SYSTEM

The offering of any gambling activity in Spain is subject to obtaining a prior licence from the SGR. The law foresees three types of licences: general licence, singular licence, and authorization.

General Licences: As explained, the deadline for filing the application for general licences expired December 14, 2011. A new licensing procedure could be opened at any time by the Government although this is currently not expected. Operators could also request a new licensing procedure to be opened, a process which would take around two years. The license applications for the general licences are currently under revision and will be granted before June 30.

These licenses can authorize operators to offer those games classified within the categories of Lotteries, Bets, Raffles, Contests and Other games. The undergoing licensing

procedure will grant the licenses for the activities of Bets, Contests and Other games. The licenses for Lotteries are reserved to the national lottery operators (SELAE and ONCE). Those for Raffles were excluded from this first licensing process.

In accordance with Article 3 of the Royal Decree 1614/2011 regarding licenses and authorizations, 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, such as the determination of the amount of the prizes or tournaments, management of players policies, transactions and settlement of payments, management of the gaming platform or user registration.”

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 associates in particular networks of poker and bingo, or other networks managed by a co-organizing company. Within these networks, players of an operator gather with players of other operators, and they play against each other. Thus, in this case, companies organizing and managing such networks would also require a license.

Singular Licences: Singular licenses can only be obtained by those operators who have previously obtained the corresponding general licence. If an operator missed the opportunity to apply for the general licence, the operator will not be able to apply for any singular licence.

On the other hand, operators holding a general license will be able to apply for singular licenses at any time in the future (the deadline of December 14, 2011, was only in relation to general licenses).

Each singular licence must be granted under the umbrella of a general license as shown in the following table:

GENERAL LICENCES	Bets	Other Games	Contest
SINGULAR LICENCES	Fixed odds sports betting Pool sports betting Other fixed odds betting Fixed odds horse betting Pool horse betting	Roulette Poker Baccarat Blackjack Bingo Complimentary Games	Contest

There are twelve types of singular licenses, and each corresponds to a particular game. For each type of game, the Government passed one specific order regulating where and how these games can be offered, maximum amounts to be deposited and/or waged, costumer rights, publicity allowed, and so on.

It is important to note that fixed odds sports betting exchanges and slots have not been allowed in the Spanish legal frame work; however, these may be approved in the near future.

Authorizations: The regulations do not yet describe which type of games will be included in the authorizations category for occasional and sporadic gambling activities. These licenses could be applied for at any time and by any company. No authorizations have yet been granted and, as far as we know, no applications have yet been filed.

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ADVERTISING AND SPONSORING

Under the new law, the advertisement, promotion and sponsorship concerning gambling activities shall be permitted, but only when these refer to gambling 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 who do not hold the corresponding license is an illegal activity in Spain, subject to heavy fines which may be imposed by the SGR.

Advertising agencies, media channels, or Internet website editors are made 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 registry of licensed operators maintained by the SGR. In any case, if these media entities would take publicity from non-licensed operators they would also be responsible.

Additionally, these media entities may be formally requested by the SGR to stop the insertion of an illegal ad with a two day prior notice. If such deadline is not complied with, again, the media entity could be fined.

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 one million and suspension of the activity for up to two years:

- ▶ 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 SGR.

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relating to sports sponsorship, advertis-

ing and promotion signed before January 1, 2011. The advertising activities under those agreements will not be subject to fines until the granting of the first license or until June 30, 2012, at the latest.

In this scenario, those advertising agreements that media companies signed before January 1, 2011, will remain valid until the granting of the first license or until June 30, 2012.

Once the new gaming licenses are in place in Spain, it appears that the SGR and other Spanish authorities will be very strict in chasing any illegal gaming activity and any illegal advertising. The Spanish Government cannot afford that gaming and betting continue as in the past years with foreign operators offering their games to Spanish residents without holding any license in Spain and without paying any taxes in the country.

TAX REGIME

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

Not only the will the operator be held accountable but also any other company contracting with the operator; the contracting company must ensure that the operator holds the appropriate gaming licence.

The gaming tax varies depending on each type of game as illustrated in Chart 1 below.

It shall also be noted that an annual tax of 0.001% on the gross income of the operator will have to be paid by all operators in the market. Furthermore, a payment of Euros 38,000 is requested by the SGR for the undertaking and issuance of any certification regarding gaming software and equipment and a payment of Euros 10,000 for each licence application submitted.

STATE LOTTERIES

The state company of lotteries and bets, SELAE, and the national blind association, ONCE, are the operators appointed for the commercialization of the national lottery games. The games that the SELAE and ONCE commercialize could be by means of tickets, or through any other electronic, telephone or interactive means. These companies could also offer any other games available to other operators.

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 personal income tax.

By means of the 2011 Annual Budget Law, LAE was transformed into a private company (then named SELAE). Thirty per cent of the share capital of this company was intended to be put in floatation in the Spanish stock market. However, this privatization process was stopped and is now dependant on the new Government's decision. Before the liberalization of this industry in Spain, LAE was the state operator and the regulator simultaneously. However, with the new legal framework, there is a gaming regulator separated from LAE and LAE has become an operator in the market.

PUNISHING REGIME

First of all, it is important to note that the eighth transitional provision of the Spanish Gaming Law – as amended last December 30, 2011 – states that

the proposed punishing regime set out in the law will not be enforced until the granting of the first gaming licence or June 30, 2012, whichever comes first.

The law foresees gaming operators, as well as any other company which offers gaming 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 SGR has powers to start the relevant punishing procedures and impose the corresponding fines. Other public bodies, such as the media and television regulator and bodies from the autonomous regions, may also have jurisdiction depending on the type of breach.

Those infringements classified as *light infringements* may be punished with a fine of up to Euros 100,000. Those classified as *gross infringements* may be punished with a fine ranging from Euros 100,000 to one million and/ or the suspension of the gaming activity for a six month period. Finally, those considered as *very gross infringements* may be punished with fines going from Euros one million to fifty million and/ or the loss of the licence and the closure of any gaming activity.

It is expected that, once the gaming licenses are granted, the SGR 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. ♣

CHART 1: GAMING TAX VARIABLES

TYPE OF GAME	TAX
Fixed odds sports betting	25% on the win.
Pool sports betting	22% on the gross revenue.
Fixed odds sports betting exchanges	25% on the operators' commissions.
Other fixed odds betting	25% on the win.
Other pool betting	15% on the gross revenue.
Other fixed odds betting exchanges	25% on commissions retained by the operator.
Fixed odds horse betting	25% on the win.
Pool horse betting	15% on the gross revenue.
Raffles	20% on the gross revenue.
Contests	20% on the gross revenue.
Other games (roulette, poker, baccarat, blackjack, bingo, complimentary games)	25% on the win.
Draws and promotional games	10% of the value of the prize.