

THE GAMBLING LAW
REVIEW

SEVENTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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REVIEW

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PREFACE

Luck always seems to be against the man who depends upon it.

Ukrainian proverb

A few days ago I took the Tube from my home in London to visit the ExCel centre in Canary Wharf to go to the International Casino Exhibition. It seemed like a long time since I had been to the ICE. In truth, the tone of the conference was somewhat subdued compared with the razzle-dazzle of previous years. Some of the larger land-based games providers had stayed away – an indication perhaps that the casino industry is still in its recovery phase and not yet ready for new investment. But there were few masks to be seen on the tube train, or among the delegates. People were shaking hands again. Although our economy has not returned to normal, and the bill is yet to be paid, it is important also to remember how far we have come: the ExCel centre had been a temporary Nightingale hospital from April 2020 to April 2021, with a capacity of 4,000 beds for covid patients (a precaution that proved fortunately unnecessary). There is no doubting times have changed very quickly – both for the better and the worse: in the Preface to the last edition of this work, I commented that Ukraine was one of the few countries that had undergone significant changes in its gambling law during the course of the previous 12 months. That seems now to be a poignantly irrelevant observation. But however terrible the situation in Ukraine has become, my task is to look elsewhere, and introduce a work on the past year in gambling law, and the predictions for the next.

Last April, I tried to identify some of the key themes that might emerge in a post-pandemic world in order to assess what our ‘new normal’ for leisure and entertainment was going to look like. At that time, it appeared that the pandemic was already coming to its close and that we might very soon enjoy an easing of restrictions. I did not realise that we were only about half way through the process with another full year of lockdowns and restrictions still to come (to say nothing of a further programme of booster vaccines). So it is perhaps only now, in April 2022, that we are able to start perceiving how a world that has to shrug at the continued presence of covid-19 might look.

One of the first points that I raised was that, in the years of the pandemic, Western society had refocused attention on domestic homes, and had made an important social transition to home being a place of work as well as normal domestic life. I venture to say that when seen in terms of an impact on the overall population, that change has probably been the single largest social change so far this century. I am certainly still working mostly from my home and, like millions of others, enjoying a different perspective on what it is to be at work, including differing pressures, changing patterns of social interaction and the extra time that used to be spent on a (usually unpleasant) commute. The average commute to work across the UK is approximately 40 minutes each way (with London having a far longer average

74 minutes each way), and so reducing or eliminating travel to the workplace has probably increased the time available for work or leisure by as much 5 to 10 per cent across large parts of the services economy, as well as reducing that aspect of the cost of living.

Since the winding back of restrictions at the beginning of 2022, we have seen a sharp increase in workplace attendance, but a very large number of businesses have now adopted a 'hybrid model', and employees are increasingly asking for that to become a permanent feature of working patterns. Consequently, from Tuesday to Thursday, life resembles its pre-pandemic rhythm. But Mondays and Fridays have a different feel. Since January, those who operate restaurants and bars have seen a dramatic increase in the normal patterns of attendance, but there have been significant changes that require adaptation. I do not think that I predicted that the enthusiasm for home-working would stratify society by age. Those in their 20s and early 30s heavily favour a full-time return to work, while those over the age of 55 tend to want to work from home permanently. That reflects not only a desire for training (and perhaps also the lack of space available for work in smaller homes) but also more deeply that work is actually a social space – with many singletons looking for friendship and entertainment as much as for professional experience.

I also predicted that the substantial shift from urban living to a disaggregated workforce would be permanent. I think now that this was a hasty prediction and, in any event, it is far too early to tell whether this will happen. The first point is that although there are many renters or flexible workers who can make the move from cities to the countryside (or vice versa), there are plenty of others who are tied by more long-term commitments such as children's schooling to stay put. The other factor is that cities are places not just for work, but concentrations for leisure activities – and the public has shown a very strong desire to get back to enjoying itself in theatres, concert halls, bars and casinos. So while many have reassessed that a life nearer to the countryside is more healthy and cost-effective, any exodus has been nuanced. It seems likely that we will only see the true level of change in three to five years. Let us not forget also that working patterns are not necessarily confined by national boundaries. Several governments have been quick to recognise the advantages of attracting generally affluent desk-based workers to populate sunnier and cheaper living destinations – with countries such as Italy, Spain and Portugal all developing 'digital nomad' visa schemes to allow workers to work for up to a year abroad without becoming liable to the (full) tax implications of residence abroad.

All these complex changes leave a significant question mark over the planning uses of parts of our urban centres. Although there has been a significant return to work, and offices and shops are returning to their pre-pandemic levels of use, there are clearly some long-term shifts in the way that urban space is needed, and that process will continue as retail and office space is reused either for residential projects or entertainment space. Restaurant and entertainment attendance has rebounded – though still not to pre-pandemic levels, and there are a lot of changes to the labour market in those industries that will take time to be solved.

Meanwhile, the rise of the home as a centre of personal entertainment continues unabated. The 5G network and fast broadband continues to level the playing field across the developed world as consumers demand the ability for the whole family to stream entertainment and work from home at the same time. In the UK, a recent survey (namely Bazaarvoice 2021), 55 per cent of UK consumers said that they would prefer to shop digitally rather than in store. At the same time, the same survey gives insights into how our shopping methodology has changed, with more than 75 per cent of US online shoppers saying that they 'always' read reviews before making a purchase. These new 'networks of trust', whether

expressed by influencers, reviewers or affiliate schemes have become some of the most important drivers of customer behaviour. We have seen a rapidly growing sophistication in controlling the authenticity of reviews, social media messages and the news itself. Another change is the move from social media from being a place merely for messaging to a direct place for purchase – with one in three of those surveyed having purchased an item through social media for the first time in the last 12 months. To be clear, these were technological and social trends that were not specifically linked to the pandemic, but they have been accelerated and then cemented in our habits by the necessity of lockdown and the subsequent longevity of our confinement. And, let us not forget, they are also vastly more convenient for us, while allowing retailers and service providers to understand their customer base at a level of detail impossible a decade ago.

What does this mean for land-based gambling? As with shopping generally, we have seen certain types of gambling product transfer substantially from a land-based to an online model. Lotteries and sports betting are both areas of focus, since (apart from track-side betting) the convenience of online betting and lottery tickets is not counterbalanced by any real ‘thrill’ from physical attendance at the licensed premises. However, the more socially focused forms of gambling – casino and bingo to give two examples, are predicted to rebound strongly, though in the case of some casinos, we have yet to see the full return of tourism to pre-pandemic levels.

Speaking of tourism: 2022 seems likely to be the first time that many of us get to have a holiday in a long while – and we can all see that the skies are criss-crossed with vapour trails in a way that we have not seen since 2019. That will provide a very important boost for many countries that rely on summer holidays as an important part of their income. But the future looks somewhat more challenging for a large-scale return to business travel. There will of course be a large increase. But it is harder to justify a marketing budget with business-class flights having managed two years of videoconferences.

Last year, I tried to predict the way that the economic shock of the pandemic would impact on our leisure spending. I think I was probably wrong (twice!). In the first place, the rebound of the world’s economies has been somewhat stronger than many imagined possible – but the combination of money to spend and scarce resources has led to inflationary pressures that have been much worse than predicted – and have been further compounded by uncertainty over energy supply. If there is any good to come out of the current war in Ukraine, it may be that the world will have an even more acute incentive to turn away from excessive reliance on resources that are controlled by a single axis of political power.

What does this mean for leisure spend in the Western world in 2022? It will divide society in unfortunate ways. Many who experienced a long period of economic uncertainty, will have those stresses compounded by a period of sharp price rises. Others, as usual, will have had money to invest in rising markets, and will be feeling as though they have enjoyed ‘a good lockdown’.

Turning to this year’s edition, developments in gambling law and practice have been somewhat muted. As a case in point, the UK’s own government review of the Gambling Act has been postponed twice. The main exception to this slower tempo has been the US market, which continues to grow and expand legally and economically, and upon which much attention has naturally been focused.

I wish to thank my contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. I hope that next year’s guide will cover still

more. Let us hope that next year we can each report that some of the troubles that have plagued our society in recent times will be closer to resolution, and we can turn our attention more squarely to the regulation of entertainment.

Carl Rohsler

Memery Crystal

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April 2022

ARGENTINA

Tomás Enrique García Botta

I OVERVIEW

Argentina is the second-largest and second-most-populous country in Latin America, with a continental area of 2,791,810 square km² and an estimated population of 45,376,763.³

Argentina is organised under a federal model,⁴ in which the competence to regulate gaming and gambling is held by local jurisdictions.⁵ Argentina has 23 provinces and the City of Buenos Aires, which has a status similar to a province, all with regulatory competence over gaming and gambling.⁶

There are more than 3,200 municipalities in Argentina with a second-level competence over these activities. Municipalities' competence is limited, in general, to the issuance of business permits for the operation of land-based facilities (approval of the opening of a facility in certain area within the municipality's geographical jurisdiction), security and hygiene compliance checks, advertising (within the municipality's geographical jurisdiction), etc. The extent of the municipalities' powers will be given by each provincial legislature. In the City of Buenos Aires, there is no municipal level of government.

i Definitions

Unlike other jurisdictions, there are no general definitions related to gaming and gambling. Instead, each provincial authority and the City of Buenos Aires have enacted their own gaming and gambling regulations, lacking a homogeneous approach to this matter. A comprehensive analysis of these regulations exceeds the scope of this chapter and, thus, a general reference to the situation in the country will be made.

Despite regulatory competence being retained by the provincial and City of Buenos Aires authorities, the Argentine Civil Code, in force until July 2015, included some

1 Tomás Enrique García Botta is a partner at MF Estudio – Abogados.

2 www.ign.gob.ar/NuestrasActividades/Geografia/DatosArgentina/DivisionPolitica.

3 www.indec.gob.ar. A national census is scheduled to take place in May 2022.

4 Section 1 of the Argentine National Constitution.

5 Section 121 of the Argentine National Constitution and case law of the Argentine National Supreme Court of Justice (Fallos: 322:1142, among others). The Argentine National Congress retains regulatory competence over criminal matters, AML/CFT and taxes (the competence to establish taxes is, with some limitations, shared with provincial and the City of Buenos Aires' legislatures).

6 The Argentine Federal Government was involved in gaming and gambling activities through the National Lottery, a public corporation that offered certain products (lottery, pool betting, betting on the results of football matches, etc.) pursuant to agreements entered into with local competent authorities until February 2018. The National Lottery was dissolved through Decree No. 95/2018 of the Argentine National Executive.

provisions concerning gaming, gambling and chance in Title IX of the Third Section of its Second Book. This Title IX referred to conditional agreements and understood gambling as an agreement taking place when two or more people engaging into a game oblige themselves to pay the winner an amount of money or another determined object.⁷ A bet was defined as happening when two people being of a contrary opinion over any matter convened that the one whose opinion was founded would receive from the other an amount of money or any other determined object.⁸

As of August 2015, the Argentine Civil and Commercial Code expressly excludes the application of its provisions to state-regulated games and bets, which will be subject to the regulations set forth in the rules authorising their offer.⁹

In general, regulations in force in the provinces and the City of Buenos Aires establish broad definitions on gambling and gaming and do not address specific forms of betting or betting products. As an example, we will refer below to the definitions in force in the City of Buenos Aires and the Province of Buenos Aires.

Section 3(a) of Law 538 of the City of Buenos Aires defines betting games as those games of chance, skill and mutual bets in which, with the goal of obtaining a prize, sums of money or other assets or goods with an economic value, and subject to be transferred by and between the participants, are pledged to the outcome of an uncertain event, regardless of the predominance of the players' skill, dexterity of mastery, or whether they are of chance, and whether taking place through machines, instruments or other means, of any kind or technology, or if they are performed through competitions of any sort.

In the Province of Buenos Aires, Law No. 13,470 defines games of chance, mutual bets and related activities as any kind of game or activity of a playful nature, performed through manual, mechanical, electro-mechanical, electronic, informatic or any other means, whose result depends exclusively or mainly on chance, luck or skill, and in which participation is allowed through bets of sums of money that are made with the goal of obtaining prizes of any kind and nature. This definition includes raffles, lotteries, pool betting (*quinella*) and draws, in all their forms, combinations and denominations, as well as simple and mutual bets on races, sports competitions or playful activities of any nature, with the exclusion of those games taking place in family households with the participation of family members and guests.¹⁰

The general rule for gambling and gaming in Argentina is that they are prohibited unless expressly authorised by a competent authority. This rule was set forth in local regulations and, as of December 2016, is included in the Argentine National Criminal Code.¹¹ Betting on the results of lottery draws is not regulated.

7 Section 2,052.

8 Section 2,053.

9 Section 1,613.

10 Section 2.

11 Section 301 *bis*.

ii Gambling policy

As mentioned, the general rule in Argentina is that unless expressly authorised by competent authorities, gambling and gaming are prohibited. Provisions of this nature are enacted in all local jurisdictions.¹² This regard towards gambling and gaming resulted in an amendment to the Argentine National Criminal Code in December 2016. Through Law No. 27.346, Section 301 *bis* was incorporated into the Argentine National Criminal Code. Pursuant to this Section, the operation of gaming and gambling businesses without an authorisation granted by competent (local) authorities is considered a criminal offence that carries a penalty of three to six years' imprisonment.

Despite the general rule mentioned in the previous paragraph, gaming and gambling are widely accepted in Argentine society. In fact, land-based gambling is regulated and authorised within Argentina and casinos, horse racing tracks, betting shops, amusement arcades and lottery ticket sale venues are authorised to function depending on the jurisdiction.

As for online gambling and gaming, even though some jurisdictions regulated online gaming and gambling,¹³ there were no major advances in the development of this market. The activity of operators was limited to areas with a relatively small population, and whenever it transcended to other more heavily populated areas (such as the City of Buenos Aires), they faced prosecution (administrative and criminal as of December 2016) and website-blocking measures. This increased the operators' exposure and limited the development of the Argentine market in terms of online gambling and gaming.

The situation started to change in the second half of 2018, when the two major districts of Argentina in terms of population and income (the City of Buenos Aires and the Province of Buenos Aires) advanced in the regulation of online gaming and gambling and executed a cooperation agreement in connection with this matter. Ever since, an increasing number of jurisdictions have regulated online gaming and gambling.

iii State control and private enterprise

Depending on the jurisdiction, limits to the privatisation of gambling and gaming activities can be found in Constitutions. Examples of this situation can be found in the City of Buenos Aires and the Province of Buenos Aires' Constitutions.

Section 50 of the Constitution of the City of Buenos Aires establishes that the City regulates, manages and exploits games of chance, skill and mutual betting, not being admitted their privatisation or concession except in matters related to distribution and sale agencies. Gambling and gaming proceeds are destined for welfare and social development.

Section 37 of the Constitution of the Province of Buenos Aires sets forth that all its inhabitants have the right to receive, through effective welfare policies, the proceeds of games of chance duly created and regulated by law. The Province retains as non-delegated right to the federal state the management and exploitation of all casinos and gaming halls thereof, existing or to be created; in this sense this Constitution does not allow the privatisation or concession of the state bank through any legal form. The law regulating this provision may allow the participation of private capital in touristic development ventures, as long as it does not imply a privatisation or concession.

12 As an example, see Law No. 13,470 of the Province of Buenos Aires and Sections 116 and 117 of the City of Buenos Aires Contravention and Misdemeanor Code.

13 Misiones, Tucumán, Neuquén, San Luis, Entre Ríos, Chaco, Río Negro and La Pampa.

Notwithstanding these provisions, both the City of Buenos Aires and the Province of Buenos Aires have undertaken the regulation of online gambling and gaming, allowing the participation of privately owned corporations on the understanding that it does not imply an infringement to their Constitutions.

The competent authorities retain regulation and control competence over gaming and gambling. Land-based lottery and pool-betting products are state-owned, and the participation of privately owned companies is allowed in aspects related to their management and distribution. Jurisdictions offering online gambling and gaming products also adopt a similar approach.

iv Territorial issues

As mentioned, the 23 Argentine provinces and the City of Buenos Aires retain regulatory competence over gambling and gaming. In some jurisdictions, municipalities also have a second-level competence limited, in general, to the granting of business permits, security and hygiene compliance checks, advertising, etc. Argentina does not have jurisdictions with a favoured status for gambling and gaming.

v Offshore gambling

Offshore gambling is, in principle, prohibited in Argentina. All jurisdictions that have moved forward in the regulation of online gambling and gaming have required operators to establish a local entity and apply for licences, authorisations or permits through said local entities.

The City of Buenos Aires has adopted active measures against offshore gambling operators, seeking to block their activity within that jurisdiction. Measures included administrative and, later on, criminal prosecution, as well as the request of website-blocking orders. The legal basis for said measures have been the provisions of Sections 116 and 117 of the Contravention and Misdemeanor Code and, as of December 2016, Section 301 *bis* of the Argentine National Criminal Code.

The City of Buenos Aires has regarded as offshore operators both companies overseas and companies and individuals holding licences granted by other Argentine jurisdictions, such as the provinces of Formosa and Misiones. The judiciary of the City of Buenos Aires has adopted a similar approach to offshore gambling as the one outlined in *State of New York v. World Interactive Corporation*, Docket No. 404428/98, decided on 22 July 1999. In other words, following this case law it was understood that bets took place in the jurisdiction where punters were present (it did not matter that the servers were hosted overseas, since data was downloaded to the punters' computers). In this way, it was not relevant that the operators had a licence in the province of Misiones or Formosa, taking into consideration that online betting was not authorised in the City of Buenos Aires.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

The legal framework applicable to gambling and gaming, from a regulatory standpoint, is mainly local. Originally, regulations were intended to repress gambling and gaming, evolving later on to the regulation of these activities, first in their land-based form and currently in their online one.

Following the distribution of competences set forth in the Argentine National Constitution, criminal (including anti-money-laundering and counter-financing of terrorism

regulations), labour and foreign exchange regulations are issued by the Argentine federal government, while tax regulations are issued by all government levels, with some limits applicable to the provincial and municipal authorities.

Argentina follows the continental tradition and, therefore, the value of case law is, in principle, limited.

ii The regulator

As regulatory competence is retained by the Argentine provinces and the City of Buenos Aires, there are 24 competent authorities in connection with gambling and gaming. All regulators are listed below:

- a* Lotería de la Ciudad de Buenos Aires SE (City of Buenos Aires);
- b* Instituto Provincial de Lotería y Casinos de la Provincia de Buenos Aires (Province of Buenos Aires);
- c* Caja de Prestaciones Sociales de la Provincia de Catamarca (Province of Catamarca);
- d* Lotería Chaqueña (Province of Chaco);
- e* Instituto de Asistencia Social de Chubut (Province of Chubut);
- f* Lotería de la Provincia de Córdoba SE (Province of Córdoba);
- g* Instituto de Lotería y Casinos de Corrientes (Province of Corrientes);
- h* Instituto de Ayuda Financiera a la Acción Social (Province of Entre Ríos);
- i* Instituto de Asistencia Social (Province of Formosa);
- j* Instituto Provincial de Juegos de Azar de Jujuy (Province of Jujuy);
- k* Instituto de Seguridad Social de La Pampa (Province of La Pampa);
- l* Administración General de Juegos de Azar de La Rioja (Province of La Rioja);
- m* Instituto Provincial de Juegos y Casinos de la Provincia de Mendoza (Province of Mendoza);
- n* Instituto Provincial de Loterías y Casinos de la Provincia de Misiones SE (Province of Misiones);
- o* Instituto Provincial de Juegos de Azar de Neuquén (Province of Neuquén);
- p* Lotería para Obras de Acción Social de la Provincia de Río Negro (Province of Río Negro);
- q* Ente Regulador del Juego de Azar de la Provincia de Salta (Province of Salta);
- r* Caja de Acción Social de San Juan (Province of San Juan);
- s* Caja Social y Financiera de la Provincia de San Luis (Province of San Luis);
- t* Lotería para Obras de Acción Social de la Provincia de Santa Cruz (Province of Santa Cruz);
- u* Caja de Asistencia Social de la Provincia de Santa Fe (Province of Santa Fe);
- v* Caja Social de Santiago del Estero (Province of Santiago del Estero);
- w* Instituto Provincial de Regulación de Apuestas de Tierra del Fuego, Antártida e Islas del Atlántico Sur (Province of Tierra del Fuego); and
- x* Caja Popular de Ahorros de la Provincia de Tucumán (Province of Tucumán).

All state lotteries are members of the Association of Argentine State Lotteries (ALEA). The ALEA is a member of both the World Lottery Association and the Iberoamerican Corporation of Lotteries and State Bets. The ALEA works as an industry association but has no regulatory and enforcement competence in connection with gambling and gaming.

iii Remote and land-based gambling

The legal framework has been designed for bricks-and-mortar gambling, being later on expanded in some jurisdictions to online gambling and gaming. Even though the nature of an activity or behaviour remains the same whether it is performed online or in the physical world and should be regarded without reference to the medium where it was performed,¹⁴ some regulations have adopted a differential approach taking this circumstance into consideration. As an example, this was the situation in the City of Buenos Aires, where the online gambling regulations expressly exclude land-based permit holders from the possibility of applying for an online gambling agency permit.¹⁵ This restriction was then limited only to lottery agency permit holders.¹⁶

Section 301 *bis* of the Argentine National Criminal Code applies both to land-based and online gambling and gaming.

iv Land-based gambling

Land-based gaming is regulated and authorised in all jurisdictions in Argentina. At a very high level, casinos, other gambling venues (without dealers), lottery ticket sales venues and betting shops may be found across the country.

As an example, in the City of Buenos Aires, there is a floating casino with over 100 tables and 1,500 electronic gaming machines; a horse-race track with over 4,000 electronic gaming machines running; and over 1,200 lottery ticket sales venues.¹⁷

In other jurisdictions and in general in Argentina, there are more gambling venues (without dealers) than casinos (with table games with dealers and electronic gaming machines), although there are no nationwide figures available on this matter.

v Remote gambling

Argentina does not have a nationwide remote gambling offer. In general, remote gambling is limited to certain provinces that have regulated online gaming¹⁸ and restricted to players located within those jurisdictions. Since IP blocking is in principle not available in Argentina, restrictions related to accepted payment methods have been adopted and have worked so far as a solution to territorial issues related to online gaming. As an example, players are only allowed to cash in and cash out in lottery ticket sale venues or betting shops located within the province or jurisdiction granting the online gaming licence. Other jurisdictions, such as the City of Buenos Aires, have required permit holders (operators) to implement geofencing tools so as to limit participation in online gaming and gambling to players physically located in this jurisdiction. The accuracy of these tools will be tried and tested in the months to come.

14 See Falque-Pierrotin quoted by Villar Palasí, José Luis: Implicaciones Jurídicas de Internet, Revista Saberes, Volume 1, 2003, Universidad Alfonso X El Sabio, available at <https://revistas.uax.es/index.php/saberes/article/view/680>.

15 Section 8(d) of Resolution No. 321/2018 of LOTBA's board of directors.

16 Section 2 of Resolution No. 49/2020 of LOTBA's board of directors.

17 See Management Report 2017–2018 available at www.loteriadelaciudad.gob.ar/site/Documentos/Institucional/Informe%20Gestion%20Julio%2017%20-%2018.pdf.

18 Misiones, Tucumán, Neuquén, San Luis, Entre Ríos, Chaco, Río Negro and La Pampa.

vi Ancillary matters

Unlike other jurisdictions, in Argentina only operators are subject to granting of a licence. Some jurisdictions require suppliers, components and certifying laboratories to register with the regulators¹⁹ with substantial less scrutiny than in a licensing process. Also, some jurisdictions require that electronic gaming machines and other terminals are certified as compliant with international standards.

vii Financial payment mechanisms

In Argentina, gambling and gaming transactions need to be performed in Argentine pesos. Some jurisdictions also require that gambling operations are conducted through state-owned banks.²⁰ Although cryptocurrencies are not prohibited in Argentina, their use for gambling and gaming has not been authorised.

III THE LICENSING PROCESS

The licensing process should be reviewed on a case-by-case basis, depending on the jurisdiction involved. This includes both the applicable requirements and the sanctions for non-compliance, with the caveat that operating without a licence is regarded as a criminal offence pursuant to Section 301 *bis* of the Argentine National Criminal Code.

IV WRONGDOING

Licensees and, in certain jurisdictions, regulators are responsible for ensuring compliance with anti-money-laundering and terrorism-financing regulations. Resolution No. 199/2011 of the Unit of Financial Information expressly addresses the gambling industry and establishes the policies that shall be adopted by licensees and other obliged subjects (any other natural person or corporation running a gambling operation) to prevent money laundering. As mentioned, regulatory competence over this matter resides with the Argentine federal government.

V TAXATION

Being a country organised under a federal model, Argentina has three taxation levels: federal, provincial and municipal. In the City of Buenos Aires, the taxation levels are only two: federal and provincial.

At a federal level, the following taxes may apply to operators' activity:

- a* income tax, at a 41.5 per cent rate over income;²¹

19 As an example, see Resolution No. 220/2019 of the Province of Buenos Aires regulator setting forth a registry for online gaming laboratories and Resolution No. 11/2020 of LOTBA.

20 As an example, see Section 8 of Law No. 538 of the City of Buenos Aires and Section 163 of Law 15,079 of the Province of Buenos Aires.

21 Section 73, second paragraph of the Income Tax Law as amended. No tax will apply to the distribution of dividends derived from gaming operations, though it will be presumed that any dividends subject of distribution originated in activities subject to a lower tax rate (Section 149.10 of the Income Tax Law Regulatory Decree as amended). Income tax withholding applicable to the distribution of dividends is 7 per cent. The income tax rate may be lower for online gambling agencies in the City of Buenos Aires, as per LOTBA's understanding that this activity is not subject to the increased rate. However, since LOTBA

- b* value added tax, in principle at a 21 per cent rate provided the operator charges fees to participants or players (i.e., rake at poker); and
- c* credits and debits tax, at a 0.6 per cent rate over credits and 0.6 per cent over debits on the operators' bank accounts. Up to 33 per cent may be regarded as an advance payment of income tax.

Additional taxes may also apply to any prizes collected by participants or players. Players' winnings may be subject to income tax if they are professional players or e-sports athletes.

At a provincial level, the following taxes may apply to the operators' activity:

- a* turnover tax, in general levied over gross gaming revenue and at rates to be established by each local jurisdiction;
- b* administrative fees, payable to regulators; and
- c* stamp tax – agreements executed by operators may be subject to this tax.

In the case of operators with offices and other land-based venues, municipal taxes may also be applicable. As mentioned, there is no municipal taxation level in the City of Buenos Aires.

VI ADVERTISING AND MARKETING

In principle, there is no distinction between advertising and gambling activities in regulations. Thus, if all gambling and gaming operation is forbidden unless expressly authorised by the competent authorities, only licensed operators will be allowed to engage in advertising and marketing and subject to the existence of advertising and marketing agreements in place among the different jurisdictions with regulatory competence. Many jurisdictions require that warnings are included in all advertising.²²

With the advance in regulation of online gambling and gaming, it is expected that jurisdictions will reach an agreement so as to allow nationwide operations, marketing and advertising, alongside responsible gaming actions.

VII THE YEAR IN REVIEW

In the last edition, we stated that the outlook for 2021 was uncertain at the very least. We mentioned that covid-19 had a major impact on land-based gambling and gaming, with closures of casinos, gambling venues, betting shops and lottery ticket sale venues enacted nationwide. Furthermore, that while closures were lifted as at the time of writing, the reintroduction of these measures may not be ruled out in the event of an increase in the number of cases of covid-19.

Fortunately, this was not the case, and no further closures were imposed during 2021. On the contrary, and from an online gaming standpoint, 2021 marked the beginning of

has no competence over federal taxes, it remains to be seen whether the Argentine Federal Tax Authority will share this approach or not. This is a serious matter, since the general rate is 30 per cent and operators may face criminal liability if it was understood that the 41.5 per cent rate was applicable.

22 See Laws No. 4,182 and 6,330 of the City of Buenos Aires and Section 10 of Law No. 15,131 of the Province of Buenos Aires.

operations in the City and the Province of Buenos Aires. At this point, there are three operators live in the Province of Buenos Aires²³ and seven live permit holders (operators) in the City of Buenos Aires,²⁴ with more expected to go live throughout 2022.

Although we saw some attempts at a federal level to tax players' winnings through an amendment of the indirect tax on online wagers that was approved in December 2016 through Law No. 27,346,²⁵ the situation has not changed. This tax has not been enforced since its enactment, and it is yet to be seen whether the federal tax authorities will be able to enforce it under its amended structure.

VIII OUTLOOK

From an online gaming standpoint, 2022 is likely to see additional operators going live in the City of Buenos Aires and the Province of Buenos Aires. This is likely to impact other jurisdictions that may either undertake licensing processes or execute agreements with other jurisdictions, such as the Province of Buenos Aires, the City of Buenos Aires or other provinces that have regulated online gambling and gaming.

The Provinces of Mendoza and Córdoba appear as promising markets due to their size. In the case of Córdoba, the participation of foreign entities is authorised to the extent they execute a joint venture agreement with a local company and award the local company a participation percentage of at least 15 per cent in the proceeds. In the case of Mendoza, the need of a local partner is advisable, as entities with a presence in this jurisdiction will receive a higher scoring in the tender process. In both cases, the number of licences is limited.

As for the Province of Buenos Aires and the City of Buenos Aires, 2022 is expected to be a year of consolidation of these markets. Consolidation will also bring some visibility in connection with the size of the market and its reaction to an increasing amount of permit holders (operators) in the case of the City of Buenos Aires.

There are several core matters that need analysis and resolution by regulators in Argentina in order to allow operators to run businesses nationwide. Without a comprehensive framework, true development of the Argentine online gaming market will not be possible, exposing operators to uncertainty and undesired liabilities. Regulators will need to address core issues such as payment methods, advertising, tax rates and responsible gambling regulations.

Other matters that need addressing at a federal level involve enacting foreign exchange regulations to allow international liquidity, distribution of dividends to operators' parent companies overseas, and payment to foreign suppliers. At this point, international liquidity is not allowed and distribution of dividends to foreign shareholders as well as payments to foreign suppliers are subject to several limitations imposed by the Argentine Central Bank.

On a separate note, the overall situation in neighbouring countries, such as Brazil, is likely to have an influence in Argentina, either with companies starting an operation in these neighbouring countries and then expanding to Argentina or the other way around. Chile and Peru are also expected to move forward with the regulation of online gaming and gambling during 2022.

23 With at least another three operators out of the seven licensees expected to go live during 2022.

24 <https://www.saberjugar.gob.ar/?page=agencias-juego-en-linea>.

25 Law No. 27,591 published in the Official Gazette on 14 December 2020.

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