

THE
GAMBLING LAW
REVIEW

SIXTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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REVIEW

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CONTENTS

PREFACE.....	vii
<i>Carl Robsler</i>	
Chapter 1 GAMBLING: A LEGAL AND PHILOSOPHICAL OVERVIEW	1
<i>Carl Robsler</i>	
Chapter 2 GAMBLING AND EUROPEAN LAW	12
<i>Philippe Vlaemminck, Robbe Verbeke and Mathilde Thibault</i>	
Chapter 3 OVERVIEW OF US FEDERAL GAMING LAW	31
<i>Behnam Dayanim, Jeremy Gordon and Rachel Miller</i>	
Chapter 4 ARGENTINA.....	54
<i>Tomás Enrique García Botta</i>	
Chapter 5 AUSTRALIA.....	63
<i>Jamie Nettleton, Shanna Protic Dib and Brodie Campbell</i>	
Chapter 6 AUSTRIA.....	80
<i>Christian Rapani and Julia Kotanko</i>	
Chapter 7 BELGIUM	91
<i>Philippe Vlaemminck and Robbe Verbeke</i>	
Chapter 8 BRAZIL.....	102
<i>Luiz Felipe Maia and Flavio Augusto Picchi</i>	
Chapter 9 CYPRUS.....	117
<i>Antria Aristodimou and Marios Christodoulou</i>	
Chapter 10 CZECH REPUBLIC	131
<i>Vojtěch Chloupek and Michaela Hermanová</i>	

Contents

Chapter 11	DENMARK.....	143
	<i>Henrik Norsk Hoffmann</i>	
Chapter 12	ESTONIA.....	157
	<i>Andrius Gabnys</i>	
Chapter 13	FRANCE.....	166
	<i>Alexandre Vuchot, Cathie-Rosalie Joly and Rami Kawkabani</i>	
Chapter 14	GERMANY.....	181
	<i>Joerg Hofmann, Matthias Spitz and Nikolai Straimer</i>	
Chapter 15	GIBRALTAR.....	194
	<i>Andrew Montegriffo and Louise Lugaro</i>	
Chapter 16	HONG KONG.....	205
	<i>Vincent Law and Alan Linning</i>	
Chapter 17	INDIA.....	212
	<i>Vidushpat Singhania</i>	
Chapter 18	IRELAND.....	228
	<i>Alan Heuston</i>	
Chapter 19	ISRAEL.....	246
	<i>Liran Barak</i>	
Chapter 20	JAPAN.....	254
	<i>Hitoshi Ishihara</i>	
Chapter 21	LATVIA.....	265
	<i>Andrius Gabnys</i>	
Chapter 22	LITHUANIA.....	275
	<i>Andrius Gabnys</i>	
Chapter 23	MACAO.....	284
	<i>Pedro Cortés and António Lobo Vilela</i>	
Chapter 24	MALTA.....	303
	<i>Andrew J Zammit, Gayle Kimberley and Nicole Sciberras Debono</i>	

Contents

Chapter 25	MEXICO	321
	<i>Carlos F Portilla Robertson and Ricardo Valdivia González</i>	
Chapter 26	NETHERLANDS	333
	<i>Alan Littler</i>	
Chapter 27	NORWAY.....	343
	<i>Brede A Haglund and Alexander Mollan</i>	
Chapter 28	POLAND.....	350
	<i>Piotr Dynowski and Michał Salajczyk</i>	
Chapter 29	PORTUGAL.....	362
	<i>Filipe Mayer and Alcina de Oliveira Alves</i>	
Chapter 30	SPAIN.....	371
	<i>Paula González de Castejón and Alberto Lobato</i>	
Chapter 31	SWITZERLAND	382
	<i>Simon Planzer</i>	
Chapter 32	UNITED KINGDOM	392
	<i>Carl Robsler</i>	
Chapter 33	UNITED STATES – NEVADA.....	408
	<i>Sonia Church Vermeys, Erin Elliott and Marckia Hayes</i>	
Appendix 1	ABOUT THE AUTHORS.....	421
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	441

PREFACE

Again, the public showed that they would bear their share in these things; the very Court, which was then gay and luxurious, put on a face of just concern for the public danger. All the plays and interludes which, after the manner of the French Court, had been set up, and began to increase among us, were forbid to act; the gaming-tables, public dancing-rooms, and music-houses, which multiplied and began to debauch the manners of the people, were shut up and suppressed; and the jack-puddings, merry-andrews, puppet-shows, rope-dancers, and such-like doings, which had bewitched the poor common people, shut up their shops, finding indeed no trade; for the minds of the people were agitated with other things, and a kind of sadness and horror at these things sat upon the countenances even of the common people. Death was before their eyes, and everybody began to think of their graves, not of mirth and diversions.

Daniel Defoe. *A Journal of the Plague Year*

A year ago, I began the preface to the fifth edition by reminding readers of the most famous epidemic that ever troubled Britain: the Great Plague of 1665, which closed the theatres and silenced the ‘jack puddings and merry Andrews’ in London for a whole year. Writing of that same event years later, Daniel Defoe reminds us that despite the passing centuries, the human impact of plague has actually not changed that much. In another passage from his journal, he remarks how he could only pass along the king’s highway if he obtained a paper from a magistrate to say that he was in full health. The judiciary may have been replaced by the PCR swab or the vaccine passport, but the feeling that the public does not enjoy its normal liberties is scarcely different then than now. Another point that Defoe notes, and which we should not ignore, is that the effect of plagues is marked not in inconvenient days or months, but in decades. ‘Plague Bills’ showing the number of deaths in each parish were first published 1665, and the practice was not formally discontinued until 1679. And so, I begin the preface to the sixth edition of *The Gambling Law Review* in similar terms and circumstances as those of last year.

There have been many changes in gambling law and practice over the last 12 months, but, with perhaps a few exceptions (such as Ukraine), they have been of a minor nature, reflecting perhaps that governments have been so overwhelmed by the social and economic impact of the covid-19 pandemic, that they have simply not had the time to revise the intricacies of betting and gaming regulation. So, in many cases, the legal frameworks that applied in 2020 will still apply in 2021. But the chapters that we each write are designed not only to focus on the details of regulatory change but also to canvas broader themes and directions for the future, and so our authors have all had to try to describe what the future will hold, as well as the past 12 months.

Following that theme, I want in this Preface to talk not so much about gambling, but about the state of the world in which gambling exists and the macro-changes that we now face. In that regard, it seems to me that the question so often asked: ‘when things will get back to normal?’ is not really appropriate anymore. The pandemic has had such a sweeping change on the lives of those in the developed world, that not only have we been forced to break our old habits, but have had enough time to discover and develop new ones. So, no doubt we will go back to restaurants and bars again, and sometimes enjoy high street shopping or a trip to the gym. But there will also, undoubtedly, be permanent changes.

In short, the pandemic, like a world war or a crisis of resources, has created a paradigm shift, a step change. We could go back to our old habits and ways of working. But would that really be such a good idea? Should we want to? The First World War, for all its tragic loss of life, brought us into the modern world and forced societal change at the deepest level. The peace in 1918 brought with it a number of social and legislative changes in the UK of key importance in the century that followed. The Education Act of 1918 enforced a compulsory school-leaving age of 14, recognised special educational needs for the first time and introduced school meals. The Representation of the People Act 1918 allowed (certain) women the right to vote for the first time, and the Sex Disqualification (Removal) Act of 1919 prohibited an employer from excluding someone from a job on the basis of gender. The Ministry of Health Act 1919 created for the first time a minister of Health and made the health of citizens a government responsibility. These pieces of legislation were not the immediate effect of war, but the indicators of underlying changes in the way that society had come to view health, education and the role of women in light of the changes that war had wrought on the collective mind. There was no way back to the innocence of 1914, but there was also much to be gained from recognising that the pre-war period contained injustices and social unfairness that could no longer be tolerated in the post-war world.

If we assume that the current pandemic will resonate in socio-economic terms as loud and long as a major war then, as we emerge from its grip, it is useful to identify and predict the things that may change, and the opportunities that exist to establish new habits that will make our lives better and fairer. Identifying such changes and opportunities is very difficult. My own views are shaped by my perspective – which is a middle-aged professional asked to shoulder the minor inconvenience of homeworking, not a young bar-worker furloughed for almost a year, or a nurse on the front line of treatment and still less a Chinese worker from Wuhan – but let’s nonetheless try to uncover some of the themes.

i Geography – tectonic shifts in our domestic plan

Home/work

The most important collective discovery of the pandemic was our own homes. For millions, it ceased to be the place just to spend evenings and weekends and became the only focus of our lives. Many of us have toyed with the idea of working from home, (or rehearsed the uncomfortable conversation with our bosses about why we do not always need to be in the office). We always thought that we might be more efficient place to work, without a long commute, but there was never the empirical data to justify those theories. Now we have discovered what a year of work without a place of work feels like. The ‘To Let’ boards are springing up in urban centres, and thousands of professionals have experienced the freedoms and inconveniences of a different workplace: our bedrooms, studies, and kitchens. In 2019,

30 per cent of the UK's workforce had experienced working from home. By March 2021, the proportion had grown to 60 per cent.

The implications of this change are in my view very profound. While some are now advocating a return to office life in the summer of 2021, there is increasing evidence that the pandemic will lead to a permanent shift in the workforce away from urban centres and to more suburban and rural settings. Houses with space are more popular and generally cheaper than equivalent houses in towns. The need for large numbers of commuters to move each day to urban centres has been significantly reduced. In short, people will want to work from home more, and homes will feature as more important and valuable resources in our lives. Provided that the communications infrastructure can allow it, more of us will reduce our time in traditional places of work, and very substantially reduce the time travelling to our workplaces. This will have implications ranging from reduction in transport and carbon usage, to the development of smaller towns at the expense of larger cities. We will become a more disaggregated workforce. Over time, that disaggregation may not just challenge existing notions of work–life balance but also blur national boundaries. Once reliance on a physical workplace is diminished, and contributions to working life routinely come via remote communication, then one's workforce can not only be scattered across a country, but just as easily across a continent. We will need to see how employment and tax law deal with these challenges. But in some professional sectors at least, working from home is going to become part of the new normality. That poses challenges for government and infrastructure providers to ensure that our communications networks provide adequate bandwidth outside urban centres as well as within.

Homelschool

The transition away from concentrated work spaces, to disaggregated working and living has some interesting impacts from a technological point of view. We have all become more adept at managing our own domestic IT systems, and fortunately by 2020 most companies' IT systems had developed the resilience to operate on a remote basis. So the transition to home working did not actually require very much in the way of new technology, just a greater acceptance of technology that was already there. To give one indicia, the number of daily active users of Microsoft Teams rose from 13 million in July 2019 to 115 million by October 2020.

Home also became school for many. Where once we worried about the number of hours our children were spending online, we were suddenly grateful that they were at least ready-trained digital natives. A whole young generation whose internet experience was limited to fun and games, began to use their PCs for lessons, exams, projects, Powerpoint presentations and multiparty video conferences with an ease that many of their parents could only envy. Perhaps we need to re-examine whether 'limiting screen time' is really an achievable or even desirable aim. And a young generation will have spent a formative year both working from home, and seeing their parents do the same. That generation has already had its 'home/workplace norms' set differently to the generation before. Thousands have seen the concept of leaving home to go to university completely altered – something that again may be a permanent shift, as we have all discovered that learning yoga, cookery or French are all perfectly possible at a distance. Examinations and ways of rating achievement more generally will also permanently change. The lesson for our educators, is that some types of

experience that had previously considered only to be suitable for ‘real world’ teaching could in fact be engaged with adequately (or even optimally) through remote technology. Again, it is not that these things were not possible before the pandemic – but just that they are now a widely accepted alternative.

Home – the new entertainment hub

This conveniently brings us to highlight home as the new hub of entertainment. Of course, our living spaces and mobile devices had become the venues for streamed music, entertainment, sport (and increasingly gambling). But in 2020, home also became our shopping mall, restaurant and bar. In the UK, between November 2019 and November 2020 online food delivery increased by 107 per cent. Conversely, by comparison with the number of seated diners in February 2020, the UK figures for February 2021 were reduced by 99.88 per cent. Even when and if those restaurants return, it seems to me that they will be differently regarded. Expectations in terms of what constitutes value for money will have been reset.

Shopping is both a necessary activity and for many a form of entertainment. So far as its necessities are concerned, we have moved profoundly from a ‘travel and browse’ to a ‘click and receive’ model. The level of service provided by online retailers supported by a much enhanced and digitally managed supply chain has provoked a revolution in the way that we shop. It will be interesting to see the effect that this has on what might be called ‘leisure shopping’ – including for lifestyle goods and clothes. Again, a decline in land-based retail has been occurring over the last decade, but the pandemic has surely had a permanent impact. As restrictions are removed there will no doubt be a resurgence of interest in the high street – but probably not to the levels seen before. While there will still be strong demand for public places to enjoy retail experiences, certain types of shopping (for example normal grocery shopping) may well permanently move to an online model. The question then is how, without the support of traditional tenants like supermarkets, fashion, consumer goods and bookmakers will be able to maintain their presence on the high street and in shopping centres.

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. To take one example, National Lottery ticket sales that were predominantly retail based, declined by 18 per cent with the onset of the pandemic, but online registrations subsequently rose by more than 1.3 million. This change is actually a win-win situation for lottery operators and customer alike. The operator now has a direct relationship with customers and does not have to use a retail network to sell tickets or pay commissions. It can know its customer better, check spending patterns, cross market and observe potentially damaging behaviour. For the customer, purchase of tickets is rendered simple, tickets are never lost and numbers are automatically checked. In short, a product that was always very suitable for a remote medium has been pushed by circumstances from retail to online, and it seems unlikely that it will ever go back again. Will the same be true of betting shops adult gaming centres and casinos? I think that it seems clear that casinos will still be seen as entertainment destinations. But the future for adult gaming centres and retail bookmakers seems less certain.

Travel away from home

One sector that has been disproportionately affected by the pandemic is that of international travel. The future of that industry is very interestingly poised. On the one hand, there is

clearly a very large pent-up demand for tourist travel but, on the other, international travel brings with it a host of difficulties in terms of containment of the virus, and may also involve the public stepping outside its comfort zone. For every tourist eager to get back to normal holidays, there are others concerned by new variants. Restrictions on travel generally have had a significant impact on the world's carbon emissions (indeed we have seen the largest annual decrease in carbon emissions since 1900). So will we go back to a life of weekend breaks and convenience tourism? I think that the answer is probably 'yes, we will'. After all, at least for those in the northern parts of Europe and America, holiday travel involves one type of experience that cannot yet be delivered online – sunshine!

The picture for travel therefore seems a nuanced one: it will be harder to justify business travel, when we are not even commuting as much, but it seems likely that tourism will quickly revive to its pre-pandemic levels. Such travel will of course include the traditional gambling and sport hotspots, and hopefully attendance at sporting and tourist event will soon recover – something very much needed by many economies that have suffered profoundly in the past year.

ii The richer and poorer

The pandemic has caused a monumental economic shock. The FTSE, Dow Jones and Nikkei all saw huge losses in the early months of 2020, with the FTSE dropping 14.3 per cent during 2020, its worst performance since the credit crisis of 2008. The announcement of vaccines has caused many of the major indices to rise sharply, many to well above pre-pandemic levels, but stock prices are to some extent speculative reflections of future hopes, and do not adequately reflect the huge long term borrowing in which almost every government has had to engage. Those who print money, have placed their reputations on the line, and over the next decade are either going to have to grow or tax their way out of the crisis. Some extra burden will inevitably fall on the public.

At the household level, the pandemic has not treated everybody equally. Hundreds of thousands have lost their jobs, spent their savings and face an uncertain future. The burden has fallen particularly heavily on the young, who are most likely to be those working in the hospitality and leisure industries. By contrast others have done relatively well. In the UK, there are reports of as many as 9 million 'unexpected savers' who have faced a combination of either working from home or having their incomes supplemented by furlough schemes, and at the same time have been unable to spend anything on entertainments. Certainly, unlike other recessions, there is no 'systemic weakness' in the economy. Strangely, 2020 has seen not only record debts, but also record levels of personal savings.

Thus, while currency of all gambling – leisure spend – has been significantly reduced, in many cases it is a question of fun postponed rather than removed altogether. In the UK, the beginning of the pandemic came serious warnings from regulators asking operators to ensure that their customers, often bored, solitary and impoverished by loss of employment, did not succumb to excess gambling. So what happened? The latest statistics from the UK Gambling Commission (January to November 2020) showed no significant increase in gambling, despite the stories peddled by the media. There was, as might be expected, a continued growth in online gambling, and equivalent decline in the use of retail premises for bookmaking. But these trends are probably what one would have expected whether there was a pandemic or not. It is curious how constant gambling behaviour is in our society.

All of us have had our views changed over the past 12 months, and all of us have tried to maintain a sense of normality in unusual circumstances. It will be very interesting to see

how our society changes as a result. But in the meantime, our group of author-lawyers have at least been able to keep busy working to serve our clients, and monitor developments in this fascinating and evolving area of law.

I wish to thank my contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. *The Gambling Law Review* now contains 33 chapters, and I hope that next year's guide will cover still more. I also add a note of personal thanks to those in my own domestic and work bubble, my partner Vanessa and my son Louis, who have both had to put up with more of me in the last 12 months than anyone rightly should have to suffer, and to whom therefore I dedicate my own part in this year's edition.

Carl Rohsler

Memery Crystal

London

May 2021

BRAZIL

*Luiz Felipe Maia and Flavio Augusto Picchi*¹

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 212 million people (it is the fifth-largest country in the world with regard to size and population).² 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 twelfth-largest economy,³ 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 recent economic turmoil, gambling regulation (and taxation) may help the government to raise revenues. Several bills of law are currently under discussion in the Congress concerning casinos, bingos, online gaming, and lotteries. Integrated resort casinos were included in the Tourism Law Bill, and an Integrated Resort Bill was introduced in 2020.

The opening of the Brazilian gambling market started with the creation of the virtual and land-based instant lottery called Lotex by Law No 13,155/2015. The tender for the privatisation of Lotex took place in May 2019, but the only bidding consortium forfeited the award in October 2020. As result, the Brazilian government will need to reconfigure the business model and will probably lower the financial and technical requirements to attract more bidders in a future attempt to privatise Lotex.

In December 2018, Law 13,756 created the fixed-odds sports betting lottery method, granting powers for the Ministry of Economy to regulate it within a four-year time span and issue licences. While there was expectation for sports betting regulation to be enacted in 2020, after the covid-19 pandemic the Ministry of Economy is focused on providing financial assistance to other governmental entities and also directly to citizens.

Notwithstanding the setbacks, the Secretariat for Public Policy Evaluation, Planning, Energy and Lottery (SECAP), which is under the Ministry of the Economy, is in charge of

1 Luiz Felipe Maia is a founding partner and Flavio Augusto Picchi is a partner at FYMSA Advogados.

2 Brazilian Institute of Geography and Statistics, 'Projection of the population of Brazil and Federative Units', available at <www.ibge.gov.br>. Accessed on 17 March 2021.

3 International Monetary Fund, 'World Economic Outlook Database, October 2020', available at <www.imf.org>. Accessed on 17 March 2021.

regulating sports betting and has already issued three public consultations on the matter. SECAP succeeded the Secretariat of Fiscal Monitoring, Energy and Lottery of the Ministry of Economy (SEFEL), which was extinguished by Decree No 9.266/2018.

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, bingo 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 Gonçalves⁴ 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 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,⁵ 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 Filho⁶ 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.

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

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.

'Games of chance' are defined by Article 50 of Decree-Law 3,688/1941 (the Misdemeanour Law) 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 live 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 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'.⁷

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

'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.

The same article 51 of the Misdemeanour 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, Decree No. 70,951 of 9 August 1972 and Law 13,756 of 12 December 2018.

⁷ 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.

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 federal lottery as 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* Servico 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 no 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 these 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,⁸ 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 law of operator’s jurisdiction. This has some legal consequences in Brazil regarding consumer protection laws and unauthorised transborder financial transactions, 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 Misdemeanour Law, 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.

In the southern state of Rio Grande do Sul, an appellate court decision has stated that gambling is not prohibited because the prohibition set out in Article 50 of the Misdemeanour Law would be unconstitutional. The public attorney has appealed that decision and now the

8 Reclamação 9.134/RJ, Brazilian Supreme Court. Rapporteur, Justice Ellen Gracie. Judgment dated 15 February 2009. Available at <<http://portal.stf.jus.br/processos/detalhe.asp?incidente=3771256>>. Accessed on 17 March 2021.

case is pending judgment by the Brazilian Supreme Court,⁹ 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 resumed, which is expected for April 2021, the effects of the prior decision from the Rio Grande do Sul court remain in force, and all prosecution cases related to Article 50 are halted until the Brazilian Supreme Court renders a final opinion.

ii The regulator

SECAP is in charge of regulating lottery activities in Brazil. State lotteries must comply with the gaming standards set forth by the Secretariat 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 former Ministry of Sports (currently a division of the Ministry of Citizenship), is not regulated. Neither are social games nor any other kind of games of skill.

The free distribution of prizes is regulated by the Ministry of Economy and is subject to previous authorisation by Caixa or by the Secretariat, depending on the operator.

iii Remote and land-based gambling

There is no 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 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.

Law No 13,756/2018, which introduced fixed-odds sports betting as a lottery modality, sets forth that it can be offered by both land-based and online operators. Further, Decree No. 9,327/2018, which regulates Lotex, defines physical bets as those made by the client upon the purchase of a printed ticket and virtual bets as those made by the client via electronic channels.

v Remote gambling

Brazil’s federal legislation does not contain any specific provision related to online gambling. 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.

⁹ Recurso Extraordinário 966.177/RS, Brazilian Supreme Court. Rapporteur, Justice Luiz Fux. Available at <<http://portal.stf.jus.br/processos/detalhe.asp?incidente=4970952>>. Accessed on 17 March 2021.

vi Sports betting

The Fixed-Odds Betting lottery method was created by Law 13,756/2018, in the form of an exclusive public service of the Union, which commercial exploitation will take place throughout the national territory. This lottery method's legal definition is a system of bets related to real sports events, in which the prize the bettor can win in the event of a successful outcome is defined at the time the bet is posted.

	Land-based	Online
Types of bets allowed	Only fixed-odds on sports events	
Regulator	Ministry of Economy	
Regulation	To be issued by the Ministry of Economy in the next two years (term renewable for additional two years)	
Licensing	Authorisation (without tender) or concession (with previous public tender), yet to be defined by the regulation	
Number of licences	To be regulated by the Ministry of Economy	
Minimum payout	80% of the turnover	89% of the turnover
Maximum GGR	14% of the turnover	8% of the turnover
Mandatory payments (calculated on turnover)	0.5% for social security; 1% for the entities indicated by the Ministry of Education; 2.5% for Public Safety National Fund; and 2% for the soccer teams that assign the rights to use their names, brands, emblems, hymns, symbols	0.25% for social security; 0.75% for the entities indicated by the Ministry of Education; 1% for Public Safety National Fund; and 1% for the soccer teams that assign the rights to use their names, brands, emblems, hymns, symbols
Taxation on players' winnings	30% withholding tax on each prize over 1,903.98 reais*	
Taxation on the operator	Varies between 0.174% and 0.294% of the previous month's payout, according to Annex I of the Law	
Other applicable taxes	Ordinary corporate taxes: Income Tax: 15-25% on actual profits; Social Contribution on Profits: 9% on actual profits; PIS and COFINS: 9.25% on GGR (some expenses are deductible); and Municipal Services Tax: 2-5% on GGR	
Advertising	Shall be guided by the best practices of corporate social responsibility, according to regulations yet to be defined	
AML	The operator will have to send information to the Financial Activity Control Council (COAF), according to regulations yet to be defined	
* This amount may change yearly and corresponds to the income tax exemption limit for individuals		

The Ministry of Economy has the statutory period of up to four years to regulate the fixed-odds betting lottery method. A critical part of the regulation will be the definition of the competition model: whether the number of licences will be limited or unlimited, and as a consequence, if a public tender for licence will take place (in case the number of licences is limited) or if the applicants will only have to pay a licence fee and comply with the regulatory requirements. SECAP, which is in charge of regulating sports betting, has already issued three public consultations on the matter.

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 possession 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 racing 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 to 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.¹⁰

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

¹⁰ Article 52 of the Misdemeanour Law.

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 specifically 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 the '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 both the Financial Action Task Force and 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

Lottery operators are not taxed, since they are currently owned and operated by the government. 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 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. According to the Brazilian Revenue Service,¹¹ whenever the prize depends on the performance of the participants, it is deemed as remuneration of the work, regardless of whether the

11 Solução de Divergência COSIT No. 9, de 16 de julho de 2012.

prizes are paid in cash or in the form of goods and services. Therefore, if the prize is paid by a Brazilian legal entity to an individual fiscally resident in Brazil, it will be subject to personal income tax withholding¹² calculated based on the following progressive tax rates:

Income at or over (reais)	Up to (reais)	Tax rate (per cent)	Deductible tax amount (reais)
0	1,903.98	Exempt	0
1,903.99	2,826.65	7.5	142.80
2,826.66	3,751.05	15.0	354.80
3,751.06	4,664.68	22.5	636.13
4,664.68	and above	27.5	869.36

Sports betting and casino winnings obtained by Brazilian players on offshore websites or land-based operators are subject to taxation in Brazil, under the same percentages indicated in the chart above.

Law 13,756/2018 sets forth that all prizes from the fixed-odds sports betting lottery that are above the exemption limit of the personal income tax (1,903.99 reais) will be subject to 30 per cent income tax withholding.

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).¹³ 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'.¹⁴

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 on the Discovery Channel. That decision assumed that poker is a game of chance, illegal in Brazil. After deliberation, CONAR decided that poker is a game of skill, and allowed the 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.

12 For reference, according to Article 7 of Law 9,779/1999, non-resident taxpayers are taxed on Brazilian-earned income at a flat rate of 25 per cent (no deductions are allowed).

13 CENP, Standard Norms for Advertising Activities, São Paulo, 16 December 1998. Available at <www.cenp.com.br/PDF/NomasPadrao/Normas_Padrao_Ing.pdf>. Accessed on 17 March 2021.

14 Article 21 of the Brazilian Code of Advertising Self-Regulation.

In several situations when CONAR suspended advertising of sports betting companies located and licensed in other countries based on Article 21 of the Brazilian Code of Advertising Self-Regulation, these decisions often ignored the territoriality rule of Article 2 of the Misdemeanour Law itself, which prevents this criminal law from being applied to acts committed outside national territory.

As a result, companies headquartered abroad have been operating with websites in Portuguese and accepting bets from Brazilian internet users for years, advertising websites without any betting content, such as statistics pages or sports tips. As a rule, there has not been any restriction for advertising social gaming websites (the '.nets'), since their activity is legal in Brazil.

With the approval of Law 13,756 in December 2018, the legal ground used by CONAR to prevent the advertising of betting sites is no longer valid as sports betting is no longer illegal. One consequence of the legalisation is that some soccer teams are already being sponsored by sports-betting companies.

As explained, contest regulation is subject to federal jurisdiction 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, Decree No. 70,951 of 9 August 1972, and Law 13,756, of 12 December 2018. The following ordinances also apply:

- a* Technical Note 11/2018/COGPS/SUFIL/SEFEL-MF provides for an explanatory list of cases in which the free distribution of prizes depends on the prior authorisation of SECAP;
- b* Ordinance MF 67, of 31 July 2017 establishes that all authorisation requests addressed to SECAP must be made online, through the Prize Promotion Control System;
- c* 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; and
- d* 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'; and
- e* contests for advertising purposes must be authorised by SECAP. In order to avoid fraud or confusion between cultural contests and prize promotions, the Brazilian Ministry of Economy 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).

VII THE YEAR IN REVIEW

The covid-19 pandemic prevented much of the gaming regulation initiatives to progress much. After some disappointment with the failed Lotex public tender, 2020 brought some relevant advances in regulation of fixed-odds sports betting activities. The highlights were the publication of three public consultations on the matter by SECAP, and the inclusion of fixed-odds sports betting in the concession plans by the federal government.

The first public consultation, published by SECAP in July 2019, had seven general questions regarding regulation and aimed to gather opinions from the public and understand the market's expectations prior to the issuance of any ruling on the subject. The second public consultation, published in September 2019, aimed to collect contributions to a draft Decree on Fixed-Odds Sports Betting. Finally, the third public consultation, published in February 2020, introduced a new draft decree in light of a legal opinion issued by the Ministry of Economy's legal staff, but its provisions were left behind by the regulator after the change in the command of the SECAP in the first semester of 2020.

On 10 June 2020, fixed-odds sports betting activities were included in the concession plans by the Council of the Investment Partnerships Program. The decision was followed in August 2020 by Decree No 10,467/2020, according to which the National Economic and Social Development Bank (BNDES) will lead the concession process under the supervision of the Ministry of the Economy.

BNDES is expected to hire independent experts to assist in the economic and regulatory modelling of the concession. SECAP will use the studies from those experts to suggest the necessary changes to the Sports Betting Law with the support from BNDES and the government for the concessions to be successful.

Meanwhile, in the legislature, two bills regarding gaming are under discussion: Bill 442/1991, from the Chamber of Deputies, and Bill 186/2014, from the Senate. This is the brief history of both bills:

During the conversion of the Provisional Measure No. 671/2015 into Law 13,155, of 4 August 2015, fixed-odds sports betting was approved by the Congress and vetoed by the former President Dilma Rousseff under the justification that 'the creation of the fixed-odds lottery demands a broader regulation to assure better economic and legal security and adequate levels of fraud and money evasion control. Besides, the law didn't contain any responsible gaming measures.'

After vetoing the Article that was meant to create fixed-odds sports betting, back on 14 September 2015, the former President held a meeting with congressional leaders to assess the feasibility of getting the gaming offering approved by both houses. Subsequently, the President of the Senate introduced Bill of Law 186/14 from the Senate in the Special Commission for National Development (Commission of the Senate). A few days later, another special commission (Commission of the Deputies) was created in the Chamber of Deputies to draft the Brazilian Gaming Regulatory Framework, based on another project, the Bill of Law 442/1991.

On 30 September 2015, the President of the Senate, Renan Calheiros, included Bill of Law 186/2014,¹⁵ 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 and is ready 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.

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.

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

Bill of Law 186/2014 was rejected by the Justice and Constitution Commission on 7 March 2018 by a vast majority of 13 against it and only two senators in favour (the rapporteur and Senator Ivo Cassol) and archived due to the end of the last legislative term. Despite such a defeat, the Bill is currently ready to be presented at the plenary for vote, because Senator Ciro Nogueira requested and obtained its retrieval from the archive.

Both Bill 442/1991, from the Chamber of Deputies, and Bill 186/2014, from the Senate, may be presented in the plenary of each house to be voted anytime. 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.

	Bill of Law 442/1991	Bill of Law 186/2014
Origin	Chamber of Deputies	Senate
Status	Approved by the Special Commission	Draft proposed by the rapporteur, Senator Benedito de Lira was rejected by the Justice and Constitution Commission
Next steps	Voting in the Plenary of the Chamber to be scheduled	Voting in the Plenary of the Senate to be scheduled

15 Federal Senate, Legislative Activity. Bill of Law No. 186 of 2014. Available at <www25.senado.leg.br/web/atividade/materias/-/materia/117805>. Accessed on 17 March 2021.

	Bill of Law 442/1991	Bill of Law 186/2014
Methods	Casinos Bingo Fixed-odds sports betting VLTs Online gaming Lotteries Jogo do bicho	Jogo do bicho Video-Bingo (Class II machines) and video-jogo (VLTs), both land-based and online Bingo Casino resorts Sports betting and other non-sports related types of betting, both land-based and online Online casino games
Licences	Casinos: public bid for concession – 30-year term, renewable for equal terms. Bingo: authorisation for 20 years, renewable for one equal term. Jogo do bicho: 5 million reais minimum paid-up capital. Unlimited time licence. Lotteries: states may have bids for concession of lottery services with 20-year term. Online gaming: not defined. VLT: 20 million reais minimum paid-up capital. Type of licence not defined.	All gaming modalities must be approved by the federal government. Casinos, sports betting and online games are licensed by the federal government. Bingo is licensed by the states and the federal district. Jogo do bicho and VLTs are licensed by the municipalities. The procedures and criteria for licensing are to be determined by future regulation.

While the executive and legislative branches are slowly progressing in the legalisation and regulation of gambling activities in Brazil, the judicial branch had a noteworthy year. Several awards were issued and are expected to be paramount to address future gambling-related cases.

In June 2020, the Brazilian Supreme Court ruled that the local tax on services (ISS) can be levied on betting activities and that the constitutional tax basis for horse racing is the amount of the ‘take’ (equivalent to gross gaming revenue, or GGR).¹⁶ This case is a seminal precedent for future discussions on the tax basis of sports betting, affirming that ISS can only be levied on the GGR of sports betting.

Similarly, a São Paulo circuit judge ruled in September 2020 that ISS cannot be levied on the whole amount of the buy-ins of poker tournaments, but only on the fees earned by the organiser (i.e., total buy-ins minus prizes).¹⁷ The municipality of São Paulo has appealed, and the case is pending judgment by the State of São Paulo Court of Appeals.

Also in September 2020, the Brazilian Supreme Court ruled as unconstitutional the federal monopoly on lottery operations.¹⁸ As a result, states were found to have the right to operate all the exact same lottery modalities created by the federal law. The federal government retains the exclusive constitutional competence to legislate on lottery issues, while both the states and the federal government share the right to operate and offer lottery products.

This last ruling has a direct impact on sports betting, as all states will be able to operate sports betting within their territories. In this scenario, the federal government will be able to issue federal licences that will allow the licensees to operate both online and retail businesses all over the national territory, regardless of any state licence. At the same time, each state

16 Recurso Extraordinário 634.764/RJ, Brazilian Supreme Court. Rapporteur, Justice Gilmar Mendes. Available at <<http://portal.stf.jus.br/processos/detalhe.asp?incidente=4019006>>. Accessed on 17 March 2021.

17 Case 1038886-96.2017.8.26.0053, 16th Public Treasury Circuit Judge of São Paulo. Available at <<https://esaj.rjstf.jus.br/cposg/show.do?processo.codigo=&processo.foro=&processo.numero=10388869620178260053>>. Accessed on 17 March 2021.

18 Ação de Descumprimento de Preceito Fundamental (ADPF) 492/RJ and 493/DF, Ação Direta de Inconstitucionalidade 4.986/MT, Brazilian Supreme Court. Rapporteur, Justice Gilmar Mendes. Judgement dated 30 September 2020. Available at <<http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=452265>>. Accessed on 17 March 2021.

will be able to operate sports betting within its borders, directly or with a private operator as a partner. Since making a state lottery available outside the respective state territory is a criminal misdemeanour in Brazil, there will be a lot of discussion on how the place where the online bet is made will be determined.

VIII OUTLOOK

2021 is expected to be a busy year for gaming in Brazil.

In February, the BNDES issued the request for information to hire technical services necessary for the structuring of a project for the privatisation of the public fixed quota betting service. This process will lead to the request for proposal that is likely take place in April. We expect sports betting regulation to be issued in the second semester.

On the States level the market is moving quickly. Most of the 26 states and the federal district are trying to create or reactivate their lottery operations, and SECAP will soon issue regulations on the operation of state lotteries. Several opportunities for operators in the states will arise during the year.

Finally, on 7, April 2021 the Supreme Court is scheduled to judge extraordinary appeal No. 966,177, which is to decide whether the gambling ban set forth by Article 50 of the Misdemeanour Law is constitutional or not. Depending on the ruling of the court, all gaming activities, from bingo to casinos, both land-based and online, may become legal and unregulated in the whole country.

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Flavio Augusto Picchi is a partner at FYMSA Advogados' technology and gaming area and an experienced attorney who works in connection with domestic and cross-border transactions and legal matters in a broad range of industries. Focused primarily on venture capital and capital markets, Flavio has worked in Brazil and in the United States, both in-house and in law firms. A pioneer in providing legal services to start-up companies in Brazil, he holds a Master of Laws degree in US and International Law from the University of Miami, and a Master of Science degree in International Law from the University of São Paulo, where he also earned his JD degree. He is a member of the Capital Markets Law Committee of the Federal Council of the Brazilian Bar Association (OAB) and of the Business Law Section of the American Bar Association (ABA).

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