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Brazil

Gambling Law

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This country-specific Q&A provides an overview of gambling laws and regulations applicable in Brazil.

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Brazil: Gambling Law

1. What is the legal definition of gambling?

Gambling is not a legal concept in accordance with Brazilian law. In fact, gambling doesn't even have a perfect translation in Portuguese.

We can say that it can mean a bet or a game, involving a consideration, a prize and a chance. "Game" is defined as a type of contract in which two or more people have a particular promise (usually with pecuniary content) in favour of the person who achieves a favourable result in performing an act in which the parties actively participate. It is worth clarifying that the game necessarily depends on the performance of each part (called "player"), whether for its intelligence, skill, strength or pure chance.

"Bet" is defined as another type of contract, it would be a legal transaction in which two or more people with different opinions about a given event promise to perform a certain action (usually with pecuniary content) for the benefit of the party whose opinion prevails. Therefore, in the bet, there is no requirement for the active participation of any party (called "bettor") to influence the outcome of the event, but only the expression of a personal opinion.

The subtle difference between a "game" and a "bet" is that the outcome of a game will depend on the action of the parties, while the outcome of a bet depends on facts unrelated to the will of the parties.

Brazilian law, in the absence of a literal translation into "gambling", works with the concept of "games of chance". Since the general ban on gambling in 1941, the only legal gambling activities are lotteries under the state monopoly and horse racing betting. According to Brazilian jurisprudence, poker is considered a game of skill and therefore not illegal.

There are now several bills under discussion in Congress, comprising integrated resort casinos, bingos, online games and lotteries.

2. What legislation applies to gambling? Please provide a summary of the legal/regulatory framework.

The general gambling prohibition is set forth by the

Brazilian Criminal Misdemeanour Act (Decree-Law No. 3.688/1941), drafted with the intention of preserving social morality. It provides in Article 50 for the prohibition of "gambling," punishable by imprisonment from three months to one year, and a fine for those who establish or perform gambling in a place or public place accessible to the public through the payment of an entrance fee or otherwise. There are three definitions of "games of chance":

- a game in which winnings and losses depend solely or mainly on chance;
- betting on horse racing outside a racetrack or where they are authorized; and
- bet on any other sports competition.

Caixa Econômica Federal (Federal Savings Bank) operates the federal lottery and is regulated by several laws and decrees, mainly:

- Decree-Law No. 6,259/1944: provides for the lottery service and other measures;
- Decree-Law No. 204/1967: provides for the operation of lotteries and other arrangements;
- Law No. 6,717/1979: authorizes the modality of the federal lottery governed by Decree-Law No. 204/1967 and other measures;
- Law No. 11,345/2006: provides for the establishment of a lottery modality for the development of sports practice, the participation of soccer sports entities in this contest, and the installment of tax debts, besides amending Laws Nos. 8,212/1991 and 10,522/2002 (and other provisions); and
- Decree No. 6,187/2007: regulates Law No. 11,345/2006 and establishes the lottery modality called TimeMania.
- Decree No 11,675/2023: regulates Loteria Instantânea Exclusiva (LOTEX) and allows the Ministry of Finance to authorise, on a temporary basis, the direct operation by Caixa Econômica Federal for a specified period or until the commencement of indirect operation by the winning operator of the future concession bidding process.

The instant lottery LOTEX was created by Law No. 13,155/2015, was amended by Law No. 13,756/2018 and is regulated by Decree No. 9,327/2018. Horse race betting

is regulated by Law No. 7,291/1984 and Decree No. 96,993/1988.

Law No. 14,455/2022 authorized the Federal Executive Power to create the Health and Tourism Lotteries.

Fixed-odds sports betting was legalized by Law No. 13,756/2018, recently amended by Law No. 14,183/2021, Law No. 14,155/2022, and Law No. 14,597/2023. Most importantly, on 25 July 2023 the administration enacted Provisional Measure No. 1,182/2023, regulating, among other topics, sports betting operations. In Brazil, a Provisional Measure is a legal instrument that allows the President of the Republic to enact temporary laws with the force of law, without the need for approval from the Brazilian Congress. MPs are typically used in situations that require urgent action and cannot wait for the regular legislative process to take its course, and must be voted (with additional amendments presented by representatives and senators) in 120 days by the Congress to become law – otherwise their effects expire, if not simply rejected. Even if MP 1,182 is not approved and converted into law within the 120-day period, its guidelines will most likely be used as a reference in the forthcoming regulation, and operators should nonetheless take these aspects into consideration when planning and implementing their operations in Brazil.

3. Which body/ies regulate gambling?

For many years the competence to regulate was of Caixa Econômica Federal. In mid-2018, it was transferred to SEFEL – Secretariat of Tax, Energy and Lottery Monitoring, which was later integrated into SECAP – Secretariat of Evaluation, Planning, Energy and Lottery.

According to the current wording of Law No. 13,756/2018 (as amended by Provisional Measure No. 1,182/2023), sports betting regulation is incumbent to the Ministry of Finance (Law No. 13,756/2018 Article 29). The specific unit inside the Ministry to regulate the practice is about to be reformulated under the new government which took office on January 1st, 2023. However, the Ministry of Sports shall assist the Ministry of Finance in the inspection actions aimed at ensuring integrity in sports (Law No. 13,756/2018, Article 35-F, Paragraph 4).

Poker, recognized 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 Finance, preserving the powers of the National

Monetary Council (Law No. 13,756/2018, Article 26) when applicable, depending on the operator.

Lotteries in Brazil are regulated by Decree-Law No. 204/1967, which accompanies numerous regulations and more specific decrees. According to Article 1 of this Decree-Law, exploitation was exclusive to the Union. However, on 30 September 2020, the Brazilian Federal Supreme Court ruled such Article unconstitutional and thus the federal monopoly on lottery operations. As a result, States were found to have the right to operate all the exact same lottery modalities created by federal law. The federal government retains the exclusive constitutional competence to legislate on lottery issues, while the States and the Union share the right to operate the games.

This last ruling directly impacts sports betting, which was created as a lottery modality by Law No. 13,756/2018. Once States (and even Municipalities) are fully capable of regulating lottery modalities already authorized by the Union, they are able to run and execute them. To that end, regulators are usually placed with the governmental unit responsible for lotteries' operations and oversight.

4. Are licences available? If so: a) What is the duration of a licence? b) What types of licences are available? c) Are there different types of licences for B2C and B2B operators? d) Do software suppliers need to be licensed?

There are no licenses available at the moment at the federal level.

5. Are any types of gambling products prohibited?

Act. It includes casinos, online casinos, bingos, and sweepstakes.

The Brazilian Criminal Misdemeanour Act, drafted with the intention of preserving social morality, provides in Article 50 the prohibition of "gambling," punishable by imprisonment from three months to one year and a fine for those who establish or perform gambling in a place or public place accessible to the public, through the payment of an entrance fee or otherwise. There are three definitions of "games of chance":

- games in which winning or losing depends exclusively or predominantly on chance;
- betting on horse racing outside a racetrack or where they are authorised; and

- betting on any other sports competition.

6. What is the headline application procedure? Please include any eligibility and other application requirements, including approximate application costs and any need to establish a local presence.

There is no license available for sports betting yet at the federal level. Land-based casinos, online casinos, bingos, and other gaming modalities are still prohibited under Article 50 of the Brazilian Criminal Misdemeanour Act. In most cases, licensing for state or municipal lottery licenses are based on an accreditation model, without predefined number of licenses to be issued and with analysis being dependant on the chronological order of proposals. Requirements are defined by the tender invitation.

7. Do individuals within the business need to be personally licensed or authorised? If so, please provide headline requirements.

There is no such requirement in the current regulation.

Bill of Law No. 3,626/2023 aims at regulating sports betting operations, and it is likely to become law in a short period. It mandates that at least one member of the control group within the concerned legal entity possesses proven expertise and experience in gaming, betting, or lotteries. The bill was introduced by the Presidency under constitutional urgency and has already secured approval in the Chamber of Deputies. It now awaits further consideration in the Senate.

8. Is advertising of gambling permitted and, if permitted, how is it regulated?

The legal definition of advertising is set forth by Article 2 of Decree No. 57,690/1966 as any paid form of dissemination of ideas, merchandise, products or services by an identified advertiser. Both Decrees Nos. 57,690/1966 and 4,563/2002 regulate advertising in Brazil and, according to the latter, all advertisements in Brazil must comply with the rules set forth by the Standard Rules Executive Council (CENP). This council is responsible for regulating the commercial relations between advertisers and agencies, while the National Council for Advertising Self-Regulation (CONAR) is responsible for ensuring ethics in an advertising content.

Both CENP and CONAR are non-governmental

organisations comprised of members of the advertising industry and define their own statutes and codes. CONAR's Self-Regulation Code also includes a specific rule, according to which, advertisement contents must not "induce criminal or illegal activities".

Currently, the only criminal provision regarding gambling advertising is the prohibition to promote illegal lotteries, established by Article 51 of the Brazilian Criminal Misdemeanour Act.

CONAR's restrictions on gambling advertising have been based on the rule set forth by Article 21 of CONAR's Self-Regulation Code, according to which, advertisement content must not induce criminal or illegal activities, or encourage, stimulate or incite such activities.

No advertisement shall:

- encourage or stimulate any type of offence or racial, social, political, religious or national discrimination;
- contain statements or visual or audio presentations that may offend the decency standards of the audience it intends to reach;
- exploit the consumer's credulity, lack of knowledge or inexperience;
- cause fear without a relevant social reason; or
- exploit any type of superstition.

Article 50 of CONAR's Self-Regulation Code states that violators of the rules established in that Code are subject to the following penalties:

- a warning in writing;
- a recommendation to modify or correct the advertisement;
- a recommendation to the vehicle to suspend the broadcasting of the advertisement; and
- a public disclosure of CONAR's opinion as regards the advertiser, the agency and the vehicle for non-compliance with the measures so recommended.

Since sports betting is no longer illegal, even before the issuance of the licences, international operators are advertising in Brazil and sponsoring soccer teams.

Currently, legislation provides that CONAR may establish additional restrictions and guidelines to the regulations of the Ministry of Finance and issue specific recommendations for communication, advertising, and marketing actions of the fixed-odds lottery betting (Law No. 13,756/2018, Article 33, Paragraph 2).

In the specific area of sports betting, the Brazilian

Institute of Responsible Gambling (Instituto Brasileiro de Jogo Responsável, or IBJR) published during the first half of 2023 the Brazilian Self-regulation Code in Advertising with the goal of establishing reasonable and proportionate guidelines for online sports betting operators, media outlets, and content producers when conducting promotions or broadcasting advertisements targeted at audiences in Brazil regarding online sports betting products.

Most recently, in June 2023, it was announced a collaboration between IBJR, Brazilian Association of Games and Lotteries (Associação Brasileira de Jogos e Loterias, or ABJL) and CONAR. The objective of this collaboration is to engage in conversations regarding established global ethical standards, which are intended to be incorporated into future regulations introduced by CONAR within Brazil.

Additionally, current wording of Law No. 13,756/2018 (as amended by Provisional Measure No. 1,182/2023) establishes that disseminating advertising and commercial propaganda of unauthorised sports betting operators constitutes an administrative offense (Article 35-C, I). This provision requires ratification by the National Congress and will become enforceable only after the regulation from the Ministry of Finance allowing applications of licenses (Law No. 13,756/2018, Article 35-C, and Paragraph 5). Administrative sanctions for the infraction include:

- warning;
- in the case of a legal person, a fine ranging from 0.1% (one-tenth of a percent) to 20% (twenty percent) on the revenue product after deducting the amounts referred to in paragraphs III to VI of Article 30, relative to the last fiscal year before the initiation of the administrative sanctioning process, which shall never be less than the advantage obtained, when its estimation is possible, nor exceed BRL 2,000,000,000, per infraction, subject to the provisions of Article 35-B of this Law;
- in the case of other natural or legal persons of public or private law, and any associations of entities or persons constituted in fact or in law, whether temporarily or not, with or without legal personality, not engaging in business activity, and when it is not possible to use the revenue product criterion, the fine shall be between BRL 50,000 and BRL 2,000,000,000 per infraction, subject to the provisions of Article 35-B of this Law;
- partial or total suspension of the exercise of

activities for a period of up to one hundred and eighty days;

- revocation of authorization, extinction of permission or concession, cancellation of registration, disaccreditation, or similar releasing action;
- prohibition from obtaining ownership of a new authorization, grant, permission, accreditation, registration, or similar releasing action for a maximum period of ten years;
- prohibition from carrying out certain activities or types of operations for a maximum period of ten years;
- prohibition from participating in tenders that have as their object the concession or permission of public services, in the federal public administration, direct or indirect, for a period not less than five years; and
- disqualification to act as a director, administrator, and to hold positions in the bodies provided for in the bylaws or in the corporate charter of a legal person that operates any type of lottery, for a maximum period of twenty years.

Likewise, in a certain period to be yet scheduled by the Ministry of Finance, national sports administration entities shall prohibit, in the regulations of their competitions, sports practice organizations and athletes from promoting the names and brands of companies offering or exploiting fixed-odds lottery betting, in all their marketing properties that may be the subject of agreements on brand promotion, without the proper authorisation by the government (Law No. 13,756/2018, Article 33-B, Paragraph 3). This provision is not in force at the moment though and still dependant on the approval of the National Congress to be in effect for an indefinite term.

For its turn, Bill of Law No. 3,626/2023 also aims to regulate advertising and promotion, although further guidance is expected to be issued by the Ministry of Finance, with self-regulation encouraged (Article 16). Minimal requirements for the future ruling deal with the mandatory provision of:

- notices discouraging gambling and warning of its harms that must be disseminated by operator agents;
- other informative actions to raise awareness among bettors and prevent pathological gambling disorders, especially through the development of codes of conduct and the dissemination of best practices; and
- restrictions on the times, programs, channels,

and events for the dissemination of advertising and promotion of bets, to prevent them from being broadcast to minors.

The same bill of law also prohibits:

- advertising or promotion aimed at promoting the brand, symbol, or name of legal or natural persons, or the electronic or virtual channels used by them, without the prior authorization required by this Law.
- making unfounded claims about the odds of winning or the potential winnings that bettors can expect;
- presenting the bet as socially attractive or containing statements by well-known personalities or celebrities suggesting that gambling contributes to personal or social success;
- suggesting or implying that betting can be an alternative to employment, a solution to financial problems, an additional source of income, or a form of financial investment;
- in any way contributing to offending the cultural beliefs or traditions of the country, especially those opposed to gambling.

9. Are marketing affiliates permitted? If so, are they licensed or regulated?

There is no regulation on marketing affiliates.

10. What are the penalties for offering, facilitating or marketing unlawful gambling, and can the gambler be penalised for participating in unlawful gambling?

Article 50 of the Brazilian Criminal Misdemeanour Act establishes that the operation of games of chance in a public place or in a place available to the public is subject to imprisonment for between three months and one year, and a fine. As referred above, there are three definitions of "games of chance":

- games in which winning or losing depends exclusively or predominantly on chance;
- betting on horse racing outside a racetrack or where they are authorised; and
- betting on any other sports competition.

"Public place" includes:

- a private house in which games of chance are

held, in which usual players or participants are not members of the family at the dwelling;

- hotels or collective residences where guests or residents are offered games of chance;
- headquarters or premises of a company or association where games of chance are held; and
- establishments that aim to operate games of chance, even if their 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. 9,099/1995). In other words, a misdemeanour is a lesser offensive crime when compared to a criminal violation of Brazilian law. The term "misdemeanour" is related to setting out "public morality", which 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".

Contrary to this, "skill-based games" are those in which the results depend on the ability of the player more than on luck. It is the case with poker, for instance, and these games are legal in Brazil.

Furthermore, regarding the advertisement of foreign lotteries, Article 54 of the Brazilian Criminal Misdemeanour Act establishes that it is forbidden "*to display or have under your custody a foreign lottery draw list*". The penalty is the imprisonment, from one to three months, and a fine.

In addition, Article 57 specifically deals with the announcement of lottery results and establishes that it is forbidden "*to disclose, through a newspaper or other printed matter, radio, cinema, or in any other way, even if in disguise, an advertisement, notice or extraction result of a lottery, where the circulation of its tickets would not be legal*", being such conduct punishable by a fine.

11. Briefly detail key requirements for licensees.

Not applicable at the federal level.

12. Briefly detail key anti-money laundering requirements.

Law No. 9,613/1998, as amended by Law No. 12,683/2012, defines the AML legal framework in Brazil. Pursuant to Article 1, money laundering under Brazilian legislation is the act of hiding or disguising the nature, origin, location, disposition, remittance or ownership of

property, goods, rights or values arising directly or indirectly from a criminal offence. This law created the *Conselho de Controle de Atividades Financeiras* (COAF), the regulatory body in charge of pursuing, investigating and sanctioning any activity related to money laundering crimes. COAF issues directives to regulate activities of industries that may facilitate money laundering, such as gambling.

Ministry of Finance Ruling GM/MF No. 537/2013 establishes procedures to be adopted by entities that distribute money or goods through the operation of lotteries, for the purpose of preventing money laundering and the financing of terrorism. All prize-winners must be identified, and all prizes recorded, including prize description, related amounts, handover dates, as well as the winners' name, identification document and personal address.

For the purpose of preventing money laundering and the financing of terrorism, Ministry of Finance Ordinance GM/MF No. 537/2013 establishes that entities that distribute money or goods through the operation of lotteries shall pay special attention to serious suspicions of crimes defined in Law No. 9,613/1998, as amended, and communicate suspicious transactions to COAF, such as:

- ticket sales, the acceptance of bets or payment of prizes per decentralised units, per products and on a consolidated basis, in an accumulated amount or frequency considered unjustified in terms of the location, frequency, quantity or value;
- the payment of a prize involving a person domiciled in a jurisdiction considered, by the Financial Action Task Force (FATF), as high risk or characterised by strategic deficiencies in preventing and combating money laundering and the financing of terrorism, or in countries or dependencies qualified, by the Federal Revenue Service of Brazil (RFB), as a favoured taxation or privileged tax regime;
- the payment of more than one prize to the same person;
- the payment of a prize based on the maximum allowed bet for the game type;
- resistance by the client or others involved to provide information, or the provision of false information, or difficult or onerous verification, to identify the client or register the operation; and
- acts of the client or others involved to induce the non-compliance of records requirement established by the legislation to prevent

money laundering and terrorist financing. Regardless of analysis or any other consideration, the following operations or proposed operations must be communicated to COAF;

- payment of a prize, in cash, of BRL10,000 or more, in any type of game;
- payment of a prize, by means of a cheque issued to the bearer, of an amount equal to or greater than BRL10,000, in any type of game; and
- any case involving terrorism or terrorism suspicions.

If the operator does not communicate any suspicious transaction to COAF during the calendar year, it must issue a negative certification to SECAP by January 31 of the following year, confirming there was no occurrence in the previous year.

Based on public statements made by SECAP for fixed-odds sports betting, players shall be identified by their taxpayer number (CPF) to play either online or at land-based shops. Operators of fixed-odds betting lotteries ought to disclose to the regulating authorities all data:

- collected, held, obtained or produced by an association, entity, body or organisation operating internationally that consolidates inputs for the analysis, prohibition, detection, inhibition or prevention of irregularities in the operation of lotteries and for the payouts or suspicious activities that may compromise the integrity of a sports event;
- related to the certification of physical equipment (hardware) and computer programs (software) used by the operator; and
- concerning the validation of each bet attracted by the operator.

Bill of Law No. 3,626/2023 provides that the Ministry of Finance shall be granted unrestricted access, including in real-time, to the systems used to share such information (Article 33). This is to be confirmed or changed with the conversion of the bill to law or after a proper regulation is released by the Executive Branch regarding the topic (Law No. 13,756/2018, Article 35).

13. Briefly detail key responsible gambling (or safer gambling) requirements.

According to the current wording of Law No. 13,756/2018 (as amended by Provisional Measure No. 1,182/2023), the Ministry of Finance is responsible for establishing rules to

preserve responsible gambling, with the possibility of limiting the quantity, frequency and amounts of bets per event or bettor (Article 35-F, VIII).

By comparison, Bill of Law No. 3,626/2023 provides that, without prejudice to other requirements established in the regulation of the Ministry of Finance, the issuance and maintenance of the authorization for the exploitation of fixed-odds bets shall be conditioned on the legal entity's interested party's proof of the adoption and implementation of internal policies, procedures, and controls for responsible gambling and prevention of pathological gambling disorders (Article 8, III). Additional regulation should be established by the Ministry of Finance to assess the effectiveness of the policies to be adopted (Article 6, Sole Paragraph).

14. Briefly detail shareholder reporting and approval threshold(s).

N/A

15. Briefly detail the regulator's enforcement powers, including sanctions.

According to the current wording of Law No. 13,756/2018, the Ministry of Finance is responsible for (Article 35-F):

- authorizing, permitting, and granting, regulating, overseeing, and inspecting the operation of the fixed-odds betting lottery;
- fixing the value of the grant for the operation of the public service of the fixed-odds betting lottery;
- regulating, inspecting, and applying administrative sanctions, in accordance with Law No. 9,613 of 1998;
- initiating the administrative process and applying administrative sanctions for violations of the provisions of this Law and the regulations issued by the Ministry of Finance;
- establishing rules for the penalties and the administrative sanctioning process provided for in this Law, in order to establish:
 - a) the gradation and dosimetry of the penalties;
 - b) the criteria for defining the amount of the fine of administrative infractions and
 - c) the procedure and deadlines for the administrative sanctioning process; prohibiting, by its own act, the performance of fixed-odds

betting on certain events or individual actions in sports-themed events;

- establishing measures that the operating agent must take to prevent the participation, directly or indirectly, including through an intermediary, as bettors, of prohibited persons to bet; and
- establishing rules to preserve responsible gambling, with the possibility of limiting the quantity, frequency, and amounts of bets per event or bettor.

16. What is the tax rate?

Tax Rate by Sector

All gambling companies in Brazil are subject to the levy of corporate income tax (IRPJ) and social contribution on net profit (CSLL) at a combined general rate of 34%. The IRPJ rate is 15%, and a 10% surcharge applies to taxable income exceeding BRL 240,000 per year. CSLL is due at a rate of 9%.

The effective tax rate may vary according to the system elected by the Brazilian legal entity to calculate IRPJ and CSLL (actual profit system or deemed profit system). Companies with total revenues greater than BRL 78,000,000 in the previous year are automatically subject to the actual profit system.

Actual profits system: the tax basis is determined based on the accounting net profit, adjusted in accordance with the addition of non-deductible expenses and the exclusion of certain amounts. The Programme of Social Integration (PIS) and Contribution for the Financing of Social Security (COFINS) are taxed under the non-cumulative method, at the rates of 1.65% and 7.6% respectively, allowing credits from acquisitions;

Deemed profits system: the tax basis for services is 32% on the company's gross revenues, on an accrual or cash basis. PIS and COFINS are taxed under the cumulative method, at the rates of 0.65% and 3% respectively, not allowing credits.

Besides the ordinary corporate taxes, gambling companies' activities are also subject to the following taxes:

Instant Lottery – LOTEX

Taxation on the operator: the LOTEX operator's gross revenue is 18.3% of the total sales. This is the tax basis for PIS (1.65%), COFINS (7.6%) and Municipal Service Tax

(ISS) (2% to 5%);

Taxation on players' winnings: lottery cash prizes that exceed the value of the first tier of the Individual Income Tax monthly rate table (BRL 1,903.98) are subject to income tax withholding at a rate of 30%, as set forth in Article 732, I, of Decree No. 9,580/2018 and Article 56 of Law No. 11,941/2009. Prizes in goods and services are subject to income tax withholding at a rate of 20%, as set forth in Article 733 of Decree No. 9,580/2018.

Horse Race Betting

Taxation on horsemen's winnings: prizes paid to horsemen, breeders and jockeys are subject to income tax withholding at a rate of 15%, as set forth in Article 737 of Decree No. 9,580/2018;

Taxation on players' winnings: bettors' prizes are subject to income tax withholding at a rate of 30%, as set forth in Article 732, II, of Decree No. 9,580/2018.

Sports Betting

Taxation on the operator: Law No. 13,756/2018 established that 3% of the total online handle/turnover and 6% of the total land-based handle/turnover must be paid to public funds, social security and sports entities.

After the first public consultation held by SECAP in July 2019, it became clear for the regulator that those tax burdens were excessive. As result, the draft decree published by SECAP during the second and third public consultations proposed a different tax structure, with a flat rate of 1% on handle/turnover for both land-based and online operations. This proposal was abandoned by the regulator and Law No. 14,123/2021 and Provisional Measure No. 1,182/2023 changed the taxation to:

Social Contribution	0,1% for social security in a physical environment;	0,05% for social security in a virtual environment;
Mandatory Payments (on GGR minus Social Contribution)	0,82% % for the entities indicated by the Ministry of Education; 2,55% for Public Safety National Fund; 1,63% for the entities of the National Sports System and to Brazilian athletes linked to sports practice organizations based in the country, in return for the use of their sports nicknames, images, trademarks, brands, emblems, hymns, symbols; 3% to the Ministry of Sports.	
Taxation on Players' Winnings	30% withholding tax on each prize over BRL 2,112 (this amount may change yearly and corresponds to the income tax exemption limit for individuals)	
Monitoring Fee	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 95% of the GGR minus Social Contributions (some expenses are deductible); Municipal Services Tax: 2% – 5% on GGR minus Social Contributions.	

Poker

Taxation on the operator:

Tournaments: the operator's gross revenue is the total of the tournament's entry fees minus the amount separated for the prize pool. This is the tax basis for PIS (0.65% or 1.65%), COFINS (3% or 7.6%) and ISS (2% to 5%);

Ring games: the operator's gross revenue is the rake collected in each hand. This is the tax basis for PIS (0.65% or 1.65%), COFINS (3% or 7.6%) and ISS (2% to 5%).

Taxation on players' winnings: according to the Brazilian Revenue Service, when the prize depends on the performance of the participants, it is deemed as remuneration for the work, regardless of whether the 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 withholding calculated based on the following progressive tax rates (in Brazilian reais):

- Up to BRL 2,112.00: Income Tax Exemption (no deductible amount);
- from BRL 2,112.01 up to BRL 2,286.65: 7.5% Withholding Tax (BRL 158.40 deductible);
- from BRL 2,286.66 up to BRL 3,751.05: 15% Withholding Tax (BRL 370.40 deductible);
- from BRL 3,751.06 up to BRL 4,664.68: 22.5% Withholding Tax (BRL 651.73 deductible); and
- from BRL 4,664.69 and above: 27.5% Withholding Tax (BRL 884.96 deductible).

17. Are there any proposals for changing gambling laws and regulations in the next 12-24 months? If so, please provide an overview of the proposed changes and likely timing.

Bill of Law No. 442/1991

Bill of Law No. 442/1991 was approved in February 2022 by the Chamber of Deputies and is waiting to be voted by the Senate. It is expected to be voted until the end of 2023 or at the beginning of 2024. According to the approved draft, gambling modalities thereby are not considered a public service such as lotteries but rather a typical economic activity and include:

Casino

According to the current text, casinos may be installed in resorts as part of integrated resorts structures and must

contain at least 100 high-end hotel rooms, meeting and event venues, restaurants, bars and shopping centers.

The physical space of the casino must be at most equal to 20% of the complex's built-up area, with the possibility of hosting electronic games, roulette, card games and other authorized modalities.

In order to determine specific locations of casinos, the Executive Branch shall consider the existence of tourist heritage and the economic and social potential of the region.

The number of casinos will be calculated by State, according to the State's population as it follows:

3 (three) casinos for states with population over 25 million (only São Paulo, according to official data);

2 (two) casinos for states with more than 15 million and up to 25 million people (like Minas Gerais and Rio de Janeiro);

1 (one) casino for states with population of up to 15 million and the Distrito Federal.

Each economic group may hold only one concession per State, and accreditation will be preceded by a public auction considering both technical experience and pricing elements.

Touristic cities, classified as tourist centers by the government, will be allowed to host casinos as well, regardless of the population density of the State in which they are located. However, a tourist casino cannot be located less than 100km away from any casino integrated resorts.

Casinos on river vessels, one for each river with 1,500 km to 2,500 km in length; two for each river with a length between 2,500 km and 3,500 km; and three per river with a length greater than 3,500 km.

These vessels may not be anchored in the same location for more than 30 consecutive days, and the concession may be for up to ten establishments. These ships must have a minimum of 50 high-end rooms, restaurants and bars and shopping centers, as well as venues for events and meetings. The Executive Power may grant the exploitation of casino games on maritime vessels in the national territory for up to 10 (ten) establishments.

The minimal capital for casino operators is BRL 100,000,000.

Licensed casinos will have a 30-year authorization,

renewable for an equal period.

Bingo

The current text allows its permanent operation in bingo houses, allowing municipalities and the Federal District to explore these games in stadiums with capacity of over 15,000 people.

Bingo houses must have a minimum capital of BRL 10,000,000 and be located in places with a minimum area of 1,500 square meters, where up to 400 video bingo machines can also be located, but slot machines will be prohibited.

According to the text, at most one bingo house will be accredited for every 150,000 inhabitants and will have a 25-year authorization, renewable for an equal period.

Jogo do Bicho

For the legalization of "jogo do bicho", all licensee's records, whether of betting or extraction, must be computerized and with the possibility of remote access in real-time by the Union.

Operators must present minimum capital of BRL 10,000,000 and reserve sufficient funds for the payment of obligations, except for the prizes, when insurance, cash guarantee, bank guarantees or surety bonds will be accepted in values still to be determined by future regulation.

Accreditation will be set for a period of 25 years, renewable for an equal period.

There may be at most one operator of "jogo do bicho" for every 700,000 inhabitants of each State of DF. In those areas below the limit there will be allowed only one operator to run the game.

Online gaming

The exploitation of games of chance, through bets in electronic marketing channels, via the internet, mobile telephone, mobile computing devices or any other authorized digital communication channels, will depend on a specific regulation for this purpose, to be prepared by the Ministry of Economy.

No limitations on the number of licenses to be issued per State or population or further details were set in advance by the bill.

Excluded modalities

Other betting modalities besides horse racing, such as

pari-mutuel or direct bets (P2P) remain out of the scope of the draft and thus undefined.

Provisional Measure No. 1,182/2023

On 25 July 2023, the government published in the Official Gazette the Provisional Measure No. 1,182/2023 in accordance with federal government previous announcements on the matter, regulating, among other topics, sports betting operations. Its main aspects are presented below.

General Terms (Article 29)

The operation of sports betting lotteries will occur in a competitive environment, throughout the national territory, with no predefined limit on the number of authorizations to be granted by the Ministry of Finance to the private sector (Article 29, Paragraph 2). Both national and foreign companies duly established in Brazil will be allowed to request authorization to operate sports betting lotteries (Article 29, Paragraph 4), under requirements to be announced.

Key definitions: real sports events (Article 29-A, I)

The Provisional Measure defines “real sports-themed event” as the event, competition, or act that includes sports competitions, tournaments, games, or tests with human interaction, individual or collective (but excluding those involving only the participation of minors under eighteen years of age), whose result is unknown at the time of the bet and that are promoted or organized:

(i) in accordance with the rules established by the national sports administration organization, as provided for in Law No. 14,597/2023 – General Sports Law, or its affiliated organizations; or

(ii) by sports administration organizations based outside the Country.

Therefore, as e-sports remain unregulated in Brazil and the General Sports Law of 2023 does not explicitly include the modality in its scope, it remains uncertain whether bets will be allowed on e-sports.

Other topics include specific taxation on sports betting, regulator's (Ministry of Finance) powers, sports image rights, additional requirements and oversight, responsible gambling obligations, sports betting companies and broadcasting right restrictions, advertising, sponsorship and unauthorized operators, administrative infractions, sports integrity and betting on individual events, authorized payment institutions, AML programs, prohibitions and sanctions.

Likely timing

The Provisional Measure has the same enforceability of a law during its 120-day validity, but as of the time of this writing, it is expected not to be voted by the Congress and, as a consequence, its effects will cease.

Bill of Law 3,626/2023

On 14 September 2023, Bill of Law No. 3,626/2023, which aims to regulate fixed-odds sports betting, was approved at the floor of the Chamber of Deputies. Instead of simply amending Law No 13,756/2018, it proposes a specific and separate statute surrounding sports betting, thereby moving the “centre of gravity” of the legal subsystem for this forthcoming law.

Key definitions

Bill of Law No 3,626/2023 defines “real sports-themed event” as the event, competition, or act that includes sports competitions, tournaments, games, or tests with human interaction, individual or collective (but excluding those involving only the participation of minors under eighteen years of age), whose result is unknown at the time of the bet and that are promoted or organized:

(i) in accordance with the rules established by the national sports administration organization, as provided for in Law No. 14,597/23 – General Sports Law, or its affiliated organizations; or

(ii) by sports administration organizations based outside the Country.

Therefore, as e-sports remain unregulated in Brazil and the General Sports Law of 2023 does not explicitly include the modality in its scope, it remains uncertain whether bets will be allowed on e-sports.

However, the current version of Bill of Law 3,626/2023 introduces two new concepts:

(i) Online game: electronic channel that enables the virtual bet on play in which the result is determined by the outcome of a random future event, from a random generator of numbers, symbols, figures or objects defined in the rules system;

(ii) Online virtual gaming: event, competition or act of online gambling whose outcome is unknown at the time of betting

As such, sports betting may have as their object (i) real sports-themed events or (ii) virtual events of online games.

Operation Regime

Sports betting lotteries will be operated in a competitive environment, upon prior authorization to be issued by the Ministry of Finance without a minimum or maximum number of operators.

The current version of the bill also covers other related topics such as general requirements for operators, the adoption of mandatory corporate policies, authorization fees (with the fixed grant to be charged of BRL 30,000,000, for a period of 3 years), authorized betting channels, advertising and restrictions to broadcasting rights, betting integrity commitment, authorized methods of payment, bettor's requirements, and their basic rights, prohibitions, including the prevention of offering bonus or other prior advantages alike), prizes, taxation and redemption period, monitoring systems required, administrative infractions, sanctioning procedure, coercive and precautionary measures, specific taxation and clarifications, such as the explicit exclusion of fantasy games from sports betting.

Likely Timing

Since Bill of Law No 3,626/2023 was presented by the presidency with constitutional urgency, the Senate now will have 45 days, until November 11, 2023, to propose amendments, approve it or reject it. Otherwise, the Senate's legislative agenda will be blocked.

Health and Tourism Lotteries

Law No. 14.455/2022 and potential impact of the Health and Tourism Lotteries on Fixed Odds Sports Betting. It authorizes the Executive to create the Health and Tourism Lotteries. The operators of these lotteries could be private companies and will be able to offer lottery games of numerical predictions, lottery games of sports predictions and the fixed-odds sports betting lottery, in physical and virtual environments.

The approved text maintained the percentage of 95% (ninety-five percent) of the operator, only changing the destinations of the lottery's social destinations, as follows: 3.37% (three point thirty-seven percent) to the FNS – National Health Fund, in the case of the Health Lottery, or to the Brazilian Agency for the International Promotion of Tourism – Embratur, in the case of the Tourism Lottery. The percentage of 1.63% (one point sixty-three percent) to Brazilian sports entities that cede the rights to use their names, brands, emblems, anthems, symbols and the like for the dissemination and execution of the Fixed-odds lottery. The values of the prizes not claimed by the players of the new lotteries will be reverted

to the FNS (Health Lottery), and to Embratur (Tourism Lottery).

In September 2023, the Green Party filed a lawsuit challenging the constitutionality (ADI 7451) of the law that established the Health and Tourism lotteries. According to Federal Law No. 14,455/2022, bets can be both physical and virtual, and the management of these lotteries can be undertaken by private companies.

According to the Green Party (PV), the law does not explicitly require a competitive bidding process for private companies to take over the management of these lotteries, as mandated by Article 175 of the Federal Constitution. The party also argues that allocating 95% of the profits to the managing company contradicts the principles of public ethics, administrative actions, and diverts from the social purpose of the law. The party is requesting an interim injunction to suspend the effects of the law, with the argument that allowing it to stand would result in the appropriation of state lotteries for private purposes, to the detriment of Embratur and the National Health Fund. As of now, the injunction analysis is pending review by the Rapporteur.

18. What key regulatory developments are proposed or on the horizon in the next 12-24 months?

Law No. 14.455/2022 was approved and authorizes the Executive to create the Health and Tourism Lotteries. The operators of these lotteries could be private companies and will be able to offer lottery games of numerical predictions, lottery games of sports predictions and the fixed-odds sports betting lottery, in physical and virtual environments. This law has its constitutionality challenged before the Brazilian Supreme Court (STF), and it is not yet clear how licenses or authorizations will be made viable.

Regulation of Law No. 13,756/2018 (Fixed-odds Sports Betting Law) is also expected until the end of 2023, and licenses until the end of the first semester of 2024. In relation to this matter, Bill of Law No. 3,626/2023 was proposed with constitutional urgency and should be reviewed by the Senate until November 11, 2023. Additionally, Provisional Measure No. 1,182/2023, which amended various provisions of the original Law No. 13,756/2018, is pending analysis by the National Congress until November 21, 2023, when the text will be ratified or rejected. From there, additional regulation by the Executive branch is expected.

Bill of Law No. 442/1991, which intends to regulate

gambling in general, including casinos, bingos, online casinos and other games was approved by the Chamber of Deputies in February 2022 and may be discussed in the Senate at the beginning of 2024.

19. Do you foresee any imminent risks to the growth of the gambling market in your jurisdiction?

The religious groups in the Congress are gaining more and more political relevance and oppose any gambling bill. The unregulated and uncontrolled operation of hundreds of offshore (and some local) operators, heavily advertising in the country, may generate a conservative reaction from lawmakers and police authorities.

20. If a gambling start-up was looking for a jurisdiction in which to commence its activities, why would it choose yours?

Unfortunately, Brazil is still an unregulated jurisdiction and any start-up looking to enter the market must have an appetite for regulatory uncertainty. That being said, sports betting regulation is on the verge of being enacted, driven by the federal government's need to increase revenue through additional sources of income, such as taxation. Also, Brazil is by far one of the most interesting gaming markets in the world, with over 214 million people (it is the fifth-largest country in the world with regard to size and the seventh in population) in a single gaming jurisdiction (which means, potentially, a single license and a single regulator).

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