

THE GAMBLING LAW  
REVIEW

THIRD 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 ..... 11
<i>Philippe Vlaemminck, Robbe Verbeke and Justine Van den Bon</i>	
Chapter 3	OVERVIEW OF US FEDERAL GAMING LAW ..... 23
<i>Behnam Dayanim, Reade Jacob and Edward J George</i>	
Chapter 4	ALDERNEY ..... 42
<i>Wayne Atkinson and Michael Lyner</i>	
Chapter 5	AUSTRALIA..... 51
<i>Jamie Nettleton, Nicola Austin and Mia Corbett</i>	
Chapter 6	BELGIUM ..... 64
<i>Philippe Vlaemminck and Robbe Verbeke</i>	
Chapter 7	BRAZIL..... 76
<i>Luiz Felipe Maia</i>	
Chapter 8	BULGARIA..... 88
<i>Nadya Hambach</i>	
Chapter 9	CZECH REPUBLIC ..... 97
<i>Vojtěch Chloupek</i>	
Chapter 10	DENMARK..... 107
<i>Henrik Norsk Hoffmann</i>	



## Contents

---

Chapter 11	FRANCE.....	119
	<i>Alexandre Vuchot, Cathie-Rosalie Joly, Rami Kawkabani and Samy Smaoui</i>	
Chapter 12	GERMANY.....	133
	<i>Joerg Hofmann, Matthias Spitz and Jessica Maier</i>	
Chapter 13	GIBRALTAR.....	143
	<i>Andrew Montegriffo and Louise Lugaro</i>	
Chapter 14	INDIA.....	153
	<i>Vidushpat Singhania</i>	
Chapter 15	IRELAND.....	168
	<i>Alan Heuston and Seán Dowling</i>	
Chapter 16	ISRAEL.....	184
	<i>Yehoshua Shohat Gurtler</i>	
Chapter 17	JAPAN.....	190
	<i>Hitoshi Ishihara</i>	
Chapter 18	MACAO.....	196
	<i>Pedro Cortés and Óscar Alberto Madureira</i>	
Chapter 19	MALTA.....	206
	<i>Andrew J Zammit, Martina Borg Stevens, Nicole Attard and Yasmine Aquilina</i>	
Chapter 20	MEXICO.....	220
	<i>Carlos F Portilla Robertson and Iván Guerrero Sánchez</i>	
Chapter 21	NETHERLANDS.....	231
	<i>Alan Littler</i>	
Chapter 22	NEVADA.....	241
	<i>Sonia Church Vermeys and Erin Elliott</i>	
Chapter 23	POLAND.....	252
	<i>Piotr Dynowski and Michał Salajczyk</i>	
Chapter 24	PORTUGAL.....	263
	<i>Duarte Abecasis and Leonor Catela</i>	

## Contents

---

Chapter 25	ROMANIA .....	272
	<i>Ana-Maria Baciú and Cosmina Simion</i>	
Chapter 26	RUSSIA .....	288
	<i>Alexander Skoblo and Ekaterina Merabishvili</i>	
Chapter 27	SPAIN.....	294
	<i>Pablo González-Espejo and David López Velázquez</i>	
Chapter 28	SWEDEN.....	307
	<i>Erik Ullberg, Christel Rockström and John Olsson</i>	
Chapter 29	UNITED KINGDOM .....	317
	<i>Carl Rohsler</i>	
Appendix 1	ABOUT THE AUTHORS.....	333
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....	351

# PREFACE

Welcome to the third edition of *The Gambling Law Review*.

I was very pleased last year that we managed to increase the coverage of the guide from 16 chapters to 25. This year I am pleased again to say that we have increased coverage to 29 chapters, including new contributions from four important jurisdictions – Bulgaria, France, Macao and the Netherlands. I am delighted to welcome the new authors and thank them for their contribution, as I am also very pleased to thank those who have found the time and resources to continue to make a contribution to this work. We are getting fatter!

What are the aims of this book? There are several. First and foremost, to provide a short summary of the gambling law of the jurisdictions in question. Second, to achieve that in a format that is uniform enough to allow comparison between the different legal systems but also flexible enough to recognise that gambling law springs from different sources in different jurisdictions – in some countries it is founded in the criminal law, in other places it forms part of civil or administrative law and, of course, it is sometimes rooted in a common law and sometimes in a civil code tradition. The third aim is to allow practitioners in the field to be updated on developments over the course of the year – with a section in each chapter dealing both with the main milestones of the past 12 months and the likely developments to come. Have we achieved that end? Of course, it is for others to judge – but I was heartened to meet a fellow professional at this year's International Casino Exhibition in London who congratulated me for 'that little grey book', which he said he frequently consulted and found 'immensely useful'. And not only useful, but up to date and freely available online, as a resource for everyone.

Which brings me to the fourth (and normally unspoken) aim of this book, which is to showcase the work of some of the leading gambling lawyers across the world, without whom this book would not exist. Each has given their time and considerable experience to produce something comprehensive and digestible – and as a summary of their own thoughts and work in the field. And so, may I make this suggestion to readers from the gambling world on behalf of my co-authors? If you find this Review useful, then please give them a call, safe in the knowledge that you will get more of the same quality.

The gambling world has been a busy place again in the past 12 months. What are the key themes? Let me pick three.

## **New jurisdictions**

More and more governments are turning their minds to the regulation of gambling. The most obvious shift is in the United States, where the Supreme Court has just been considering the constitutional implications of a ban on gambling. During the preparation of this Preface, we have heard that the US Supreme Court has ruled 6:3 that the Professional and Amateur

Sports Protection Act of 1992 violates the 10th Amendment to the US Constitution, and therefore should be struck down. The 10th Amendment protects the power of individual states to make their own laws, in all circumstances where the Constitution does not explicitly give power to the federal government. It is therefore anticipated that the Supreme Court decision will mark a new turning point in the United States' relationship with gambling, more than a decade after UIGEA caused tremors across the world. There are plenty of states with draft legislation awaiting such a decision, and we will have to see the reaction of sports bodies seeking to find a way to tap into their share of a rich new market. The US is surely one of the most lucrative potential markets for sports betting – not only because it is a wealthy nation, but because it is one in which sport is marketed and televised more than in perhaps any other country in the world. With baseball, American football, basketball and ice hockey, there are four incredibly well-followed and, above all, data-rich sports that would be the subject of a very substantial betting market. Interesting times.

The US is not the only place where change is coming. We have seen new laws progressing in many countries, including Ireland, Sweden and Switzerland, and a host of significant shifts in legislation in countries as far apart as Australia and Slovenia. Further, there has been a continuing flow of decisions from the Court of Justice of the European Union in relation to the gambling regimes across Europe, and let us not forget the Asian markets, including India, where the pace of change has been somewhat slower (but the potential prize is very substantial indeed).

### **Regulators keep getting tougher**

It feels as though regulators and governments are becoming better organised and tougher on operators. Although there are still places where 'soft touch' regulatory regimes persist, more regulators are making life harder for operators, with new rules and higher penalties for non-compliance. There is an increasing focus on financial crime, money laundering and social responsibility. Industry has reacted by improving its standards, but still feels embattled against waves of criticism, which in some cases seem to impose a higher threshold than for other adult industries. Indeed, I would argue that the increased levels of regulation are more the product of an increased ability to regulate, rather than an increased need. For one thing, although the amount of regulated gambling going on in the world is certainly increasing, that may reflect the fact that regulation is more effective, and that gambling that had previously operated on a black market basis is now being brought within the fold. And even if the amount of gambling going on in the world is increasing, there is no substantial evidence that the amount of problem gambling or underage gambling is on the rise.

### **Traditional barriers are dissolving (again)**

One of the most interesting features of the international gambling industry over the past two decades is the way that it has continued to engage in paradigm shifts. After many centuries of a land-based tradition, the internet and mobile communication created an international betting market for the first time. And now, just as we are getting used to that, new developments are changing that model again. For example, bitcoin and cryptocurrency technology, which was in its infancy only a couple of years ago, is now becoming mainstream – already being used by some operators and requiring serious consideration by regulators. Many still hold the view that there are hidden dangers with such cryptocurrencies – and of course they are not without risk. However, they also provide some interesting possibilities in

terms of ensuring provenance and traceability of funds and even that the tokens can only be used by those over the age of 18.

We have also witnessed a growing convergence of gambling and game playing, a development that throws up both paradoxes and new challenges. Studies show that for many the entertainment experienced by playing games is not lessened if there are no monetary stakes, and so one must ask whether social gaming represents a fundamentally new chapter in gambling psychology and practice. Equally, the rise of social gaming models blurs the barrier between what is regulated and what is not – with e-sports, and in game rewards ('loot boxes') also confusing the picture. Traditional models and expectations of what gambling is and how that form of entertainment is monetised are radically changing – and that leads to very important questions about whether the limits of regulation need to be redefined.

In the context of these changes, an annual review of the world of gambling law surely has an important place. I close by thanking my co-authors and the editorial team at The Law Reviews for their organisation and encouragement.

**Carl Rohsler**

Memery Crystal

London

May 2018

# ROMANIA

*Ana-Maria Baciu and Cosmina Simion*<sup>1</sup>

## I OVERVIEW

### i Definitions

The Romanian primary gambling legislation (Government Emergency Ordinance No. 77/2009 on the organisation and operation of games of chance, as subsequently amended and supplemented), defines the following gambling products:

- a* Lottery – a game of chance that depends on the random outcome of events consisting of the drawing of numbers, letters, tickets or symbols, regardless of the procedure used and characteristics of the means used to make the draw (drums, wheels, cups and other similar equipment), which can be organised (in case of land-based activity) with or without the players being physically present. In relation to lottery games, the legislation sets forth the rule that both land-based lottery games and online lottery games are under the state monopoly and can be organised only by the Romanian state company, Loteria Română.
- b* Betting – a game of chance where the participant must indicate the results of future events or where the results are randomly generated by an independent IT system. The legislation expressly regulates three categories of betting: (1) fixed-odds betting (e.g., sports betting), (2) mutual betting and (3) exchange betting, which can be licensed and authorised as land-based or online gambling.
- c* Casino games – games of chance that make use of specific gaming equipment such as cards, roulettes, dice and gaming tables. A particularity of online casino games is that this category also includes online poker games and online slot machine games, thus permitting the licensed gambling operator for online casino to also offer poker and slot machine gaming on its gaming platform.
- d* Poker – a game of chance with ‘poker’ playing cards, which is – in case of land-based activities – performed exclusively between the participants in specialised locations.
- e* Land-based slot machine gaming – defined by reference to one of the following three categories:
  - slot machine games with unlimited stakes and winnings played via specific machines or equipment, with the players being physically present, operated in specialised premises where gambling takes place;
  - games played via electronic devices that offer limited risk winnings (known in the industry as ‘amusement with price’ (AWP) machines), with the players being

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<sup>1</sup> Ana-Maria Baciu and Cosmina Simion are partners at Nestor Nestor Diculescu Kingston Petersen.

- physically present, but that cannot be placed in specialised gambling premises; and
  - video lottery games, where the players are physically present and for which the gaming equipment must be connected to a central server running the gaming programme, and that validates the win.
- f* Bingo games – games of chance defined by reference to the means used in performing the activity:
- bingo games played in gaming rooms with the winnings generated by random elements that use lottery-type draw equipment and with the players physically present on the premises;
  - bingo games organised via television networks, with the players not being physically present at the time of the draw; and
  - online bingo games, which are played entirely without the players being physically present, and that are organised and transmitted via any communication system.
- g* Keno games – games of chance only regulated as online gambling activities, which are included in the category of online bingo and keno games.
- h* Tombola – the activity of drawing numbers, letters or other symbols, regardless of the characteristics of the mechanical, electronic, digital or video devices used to make the draw, whereby players (physically present or not) may win prizes only in kind, where the value of the prizes must have a minimum value of no lower than 50 per cent of the total value of the stakes paid to participate in the game. Tombola games may be organised both as land-based or online activity.
- i* Temporary games – land-based casino games, slot machine games with unlimited winnings and traditional bingo that takes place in tourist resorts or on leisure crafts qualify as temporary games of chance, and are subject to a special temporary licence and authorisation valid for a period of three months.

A distinct category of temporary games exists for poker festivals that are defined by the law as temporary events organised in tourist resorts or other locations, which consist of poker tournaments performed exclusively between the participants. Poker festivals may be organised only by operators that hold a valid licence and authorisation in this respect.

In addition to the above categories expressly defined by the legislation, any other unregulated product that fulfils the conditions of a game of chance (consideration, chance and prize) is also subject to the licensing requirement, since the Romanian regulator is legally competent to analyse such product and determine the category in which the product should be included. This analysis is performed on the basis of a request filed by the operator of the unregulated gambling product with the Romanian regulator, where the game rules and description of the product must be attached to the request.

The legislation does not make any reference to products such as fantasy league, pool betting or spread betting. It is, however, expressly provided that ‘fun games which do not imply winnings based on random elements, but have the purpose to test the force, intelligence or skills of the participant’ as well as ‘sport games, which are not mainly based on hazard and imply skills and knowledge’ are not considered gambling products, and are permitted without a licence and authorisation.

As to what concerns derivative financial products, while the gambling legislation does not make any reference to this matter, the Romanian gambling regulator represented in an

official letter that binary options as well as other types of secondary financial instruments that are expressly provided within the Markets in Financial Instruments Directive cannot be included on gambling platforms.

## **ii Gambling policy**

Gambling is generally permitted in Romania, provided that the required licences and authorisations are obtained, and the applicable legal provisions are observed in the course of business. Gambling is legally allowed in Romania in both its land-based and online forms.

## **iii State control and private enterprise**

As a matter of principle, the very first article of the primary gambling legislation sets forth that organisation and operation of gambling in Romania represents a state monopoly and may be performed only within the specific legal parameters imposed by the gambling regulation.

However, the legislation creates a legal framework where any private operator that fulfils the requirements provided by the law is able to apply for a licence and authorisation in order to conduct gambling activities in Romania. Currently, the criteria and conditions according to which the licences are granted could not be considered as leading to an oligopoly or monopoly situation.

An exception exists in relation to lottery games. The legislation in force establishes the principle according to which both land-based and online lottery games can be organised only by Loteria Română, thus representing a state monopoly.

## **iv Territorial issues**

The Romanian gambling legislation expressly provides that the licence and authorisation granted to a certain operator allows that operator to conduct its activity on a national level, without the need to obtain approvals, authorisations or licences from public authorities other than the Romanian gambling regulator. This provision imposes a notification obligation on local authorities, which means that the operator is bound to inform the local municipality in advance about the commencement of gambling activities in that specific area.

## **v Offshore gambling**

In accordance with the legislation in force, only operators based in the EU, European Economic Area (EEA) or Swiss Confederation may apply for and obtain the necessary licence and authorisation in order to provide gambling services in Romania.

A situation in which a foreign economic operator provides gambling services in Romania without holding the relevant licence and authorisation issued by the Romanian regulator is explicitly regulated by the legislation as a criminal offence sanctioned by imprisonment from one month up to one year or by a fine. Additional sanctions are also expressly provided in the legislation for a legal entity that offers unlicensed gambling services in Romania: the entity shall be dissolved and the amounts derived from the unlawful activity shall be confiscated.

As a separate tool to control and prevent unlicensed activities, the Romanian regulator manages the 'blacklist' of unlicensed gambling websites. This list currently comprises over 1,000 internet domain names. In this regard, the legislation also sets forth that internet service providers (ISPs) as well as all service suppliers for the gambling industry, including payment processors, are bound to comply with the decisions taken by the regulator. Specific



reference is made to ISPs that are required to ban access to the blacklisted websites (as well as to those websites promoting unlicensed gambling) under the sanction of a fine ranging from 50,000 lei to 100,000 lei.

## **II LEGAL AND REGULATORY FRAMEWORK**

### **i Legislation and jurisprudence**

The conditions under which the organisation and operation of games of chance are permitted in Romania are outlined in the following normative acts:

- a* Government Emergency Ordinance No. 77/2009 on the organisation and operation of games of chance (GEO 77/2009);
- b* Government Decision No. 111/2016 for the approval of the Methodological Norms for implementation of Government Emergency Ordinance No. 77/2009 on the organisation and operation of games of chance (GD 111/2016);
- c* Government Emergency Ordinance No. 20/2013 on the establishment, organisation and functioning of the National Gambling Office; and
- d* Government Decision No. 298/2013 on the organisation and functioning of the National Gambling Office.

In addition to the above-mentioned normative acts, gambling activities are also regulated by means of instructions, orders or decisions issued by the National Gambling Office (NGO) in relation to various aspects of gambling activity. The NGO is a specialised body of the central public administration subordinated to the government.

Moreover, certain specific requirements in the field of anti-money laundering and prevention of terrorism are also applicable to gambling activities, and are generally comprised in the following normative acts:

- a* Law No. 656 of 7 December 2002 on the prevention and combating of money laundering and financing of terrorism; and
- b* Regulation of 4 June 2008 for implementing Law No. 656/2002.

(As at the time of writing, both of the above are in the process of being repealed by the new legislation implementing the 4th AML Directive.)

### **ii The regulator**

The competent public authority to supervise and control the Romanian gambling market, and to grant licences and authorisations to gambling organisers, is the NGO.

### **iii Remote and land-based gambling**

The gambling legislation distinguishes between online and land-based gambling, with both categories being separately defined in the regulation, as per the following:

- a* land-based gambling activities are defined as all games of chance irrespective of whether they are expressly regulated by GEO 77/2009 that fulfil the legal conditions related to a game of chance and are performed through gaming means installed in Romania, and that are not transmitted or performed through any kind of communication system (internet, landline or mobile telephone, or any other transmission systems); and

- b* online gambling activities are defined as comprising all the games of chance irrespective of whether they are expressly regulated by GEO 77/2009 that fulfil the legal conditions applicable for a game of chance and are performed through communication systems of any kind (internet, landline or mobile telephone, or any other transmission system).

#### **iv Land-based gambling**

Pursuant to GEO 77/2009 and GD 111/2016, land-based gambling activities may be only operated in specialised locations, which are outlined below.

##### ***Casinos***

Casinos are the specialised locations used for the operation of games of chance characteristic to casinos. The surface area and structure of casinos must enable the installation of gaming equipment and other technical devices needed to carry out the specific activity, and must be located in buildings intended for use as business premises or in hotels.

Casinos are subject to minimal legal requirements with regard to the location of the premises, adequate surface and safety equipment.

##### ***Betting agencies***

Betting agencies are the specialised locations for betting activities in which at least one dependent betting terminal is operated and that cumulatively meet several specific conditions in terms of minimum surface area, mandatory equipment, etc.

##### ***Locations for the operation of slot machines***

All premises used for operation of slot machine gaming activities, irrespective of the type of slot machine, are subject to certain restrictions in relation to the advertising of the premises, as follows:

- a* organisers will prevent viewing of the activities carried out within the respective premises; and
- b* organisers will not suggest gambling activities by using images, text or other symbols.

In addition, with regard to the specific category of AWP slot machines, GD 111/2016 also provides for a general restriction on advertising, which means that the organiser is prohibited from advertising the gambling activity within the premises where this type of activity is conducted.

##### ***Locations for operation of bingo games***

Pursuant to GD 111/2016, bingo games performed in specialised gaming halls may only take place in locations that will be placed in specialised premises or business premises, which are registered as the organiser's main or secondary office and that meet a set of mandatory conditions in relation to the logistic organisation – sufficient electrical lighting system, air-conditioning system, sound system, safety-related requirements, back-up electrical circuit, etc.

**v Remote gambling**

Offering remote gambling products in Romania is subject to a licensing and authorisation procedure. In order to apply for an online licence and authorisation, several technical and operational requirements must be met. The following requirements are of particular importance:

- a* Localisation requirements – first, the main server of the operator must be located in Romania or another Member State of the EU or EEA, or in the Swiss Confederation. In addition, if the main server is not located in Romania, safe and mirror servers must be established in Romania.
- b* Use of Class II licensees – remote gambling organisers may carry out their activities in Romania by relying only on the products and services offered by B2B suppliers that hold a Class II licence issued by the NGO. The activities that entail the obligation to obtain a Class II licence include software development, platform management, payment processing, marketing affiliation or certification activities.
- c* Certification requirements – any operator applying for an online licence must hold a certification for the gambling system (software and platform being included in the scope of certification) issued by a specialised company that holds a Class II licence issued by the NGO.

**vi Ancillary matters**

Pursuant to GEO 77/2009 and GD 111/2016, the gaming equipment or components used by land-based gambling operators to conduct their activity (e.g., roulettes, slot machines, slot management systems) will be acquired only from an entity that holds a specific Class II licence issued by the NGO.

With regard to the online gambling sector, as mentioned above, business-to-business (B2B) suppliers are also subject to the Class II licensing requirement.

The legislation does not provide for a personal licence requirement for individuals holding specific positions within a gambling operator. There are, however, certain requirements for the licensing process that refer, in particular, to the directors and shareholders of the applying entity (e.g., criminal record checks, affidavits disclosing, among others, the ultimate beneficial owners).

**III THE LICENSING PROCESS**

**i Application and renewal**

As a core rule, only operators based in the EU, EEA or Swiss Confederation may apply for a license and authorisation.

***Licensing process for land-based gambling***

In order to perform land-based gambling activities, any gambling operator must obtain a Class I licence and one or several authorisations. While the licensing procedure is not product-specific, the authorisation must be obtained for each type of gambling activity intended to be performed.

In order to obtain the licence, the operator must submit an application request along with several corporate and operational documents related to the legal entity itself, and its directors, shareholders and associates.

The authorisation can be obtained by an operator that has been previously granted a Class I licence. However, the regulation allows an operator to submit licence and authorisation applications at the same time provided that the necessary conditions are fulfilled for each of these. The conditions for obtaining the authorisation vary in accordance with the type of gambling activity sought to be performed and refer to operational aspects (such as the game rules for each game offered to the players and the configuration of the gambling premises) or technical requirements (such as certification of the gambling equipment or development of the reporting solution to the NGO of the aggregated financial and operational data of the operator).

From a procedural perspective, the complete documentation must be submitted to the NGO's registry at least nine working days in advance of the Supervisory Committee's meeting. Pursuant to GEO 77/2009, 'requests to be granted with a licence to organise or authorisations to operate shall be resolved within a time frame of 30 days from the date of submission of the complete documentation'. However, considering that the NGO has the competence to request any additional documents or information deemed necessary, in practice, the licensing and authorisation procedure may exceed the initial maximum 30-day time frame provided by the law.

The Class I licence is valid for 10 years with the exception of temporary games of chance for which the licence is valid for three months. The authorisation is valid for one year, with the same exception – for temporary games of chance, the validity of the authorisation is also three months.

Although the licence has validity for 10 years, fees are owed annually in order to maintain this licence. GEO 77/2009 provides the value of the licence and authorisation fees, values that differ according to each type of game of chance. For example, for land-based fixed-odds betting, the annual licence fee amounts to €25,000; for poker clubs, the licence fee is €15,000 per year, etc. The authorisation fees are set differently – for instance, for fixed-odds betting, the authorisation fee amounts to 16 per cent of the revenues obtained by the organiser, but no less than €90,000 per year; for casino games, the authorisation fee is owed for each gaming table, which amounts to €60,000 per table for Bucharest and €30,000 per table for any other city in Romania.

In addition to the licence and authorisation fees, land-based gambling operators are also required to pay an annual contribution to the public foundation for preventing gambling addiction (which has not been established yet). Such annual contribution amounts to €1,000 and must be paid until 15 December of each year.

As far as the prolongation procedure is concerned, with the exception of temporary games of chance, in respect of which prolongation may be requested only once, the licence and authorisation for organisation and operation land-based games of chance may be prolonged, upon request, for validity periods identical to the initial period providing that, prior to the expiry date, the organiser fulfils the conditions for their extension, as per the provisions of the law.

### ***Licensing process for online gambling***

To a certain extent, the licensing and authorisation requirements for land-based gambling also apply for online activities. As a preliminary observation, while in the case of land-based gambling activities the authorisation must be obtained for each type of activity (or machine,

as the case may be), in the case of online gambling, only one authorisation is to be obtained for all the activities conducted on the same gambling platform (which can be connected to one or several internet domain names).

Other particular conditions applicable for an operator applying for a licence and authorisation to perform online gambling refer mainly to technical and operational requirements.

Thus, the applicant is required to have its entire IT system audited by a specialised testing laboratory that holds a Class II licence, while the gambling software, as well as the random number generation and return-to-player of each game, must also be certified by a Class II-licensed certifier. In terms of the necessary infrastructure, in case the main gaming server is not located in Romania, the operator must establish safe and mirror servers in Romania in order for the NGO to be able to monitor the activity related to the Romanian market and verify any incidents that occur. In brief, while the safe server stores rough replica data of the information from the gaming server, the mirror server must contain centralised reports summarising the daily activity and financial results obtained by the operator.

On the operational side, among other requirements, operators that are not Romanian-based companies are required to appoint an authorised representative (a Romanian legal or natural person) to act as the representative of the operator in relation to the Romanian state authorities.

In terms of costs, the licence fee is calculated by reference to the operator's turnover. GEO 77/2009 provides for several turnover thresholds in order to determine the applicable licence fee (e.g., the minimum amount of the licence fee is €6,000 per year for a turnover of less than €500,000 per year while the maximum amount is €120,000 per year for a turnover exceeding €10 million per year).

The amount of the authorisation fee for remote games of chance is 16 per cent of the organiser's revenue, but no less than €100,000 per year.

In addition to the licence and authorisation fees, online operators are also bound to contribute to the public foundation for preventing gambling addiction with a contribution of €5,000 per year. As at the time of writing, this public foundation has yet to be set up.

The regulation also sets forth certain administrative fees to be paid by the online gambling operator when applying for a licence, namely:

- a* a documentation analysis fee of €2,500 paid on submission of the licence with the NGO; and
- b* a fee for the issuance of the licence of €8,500 per year, per licence.

## **ii Sanctions for non-compliance**

In principle, failure to observe the legal requirements in the field of gambling may lead to civil, administrative or criminal sanctions.

By way of example, administrative liability may be triggered when:

- a* the organiser of land-based gambling activities allows individuals to participate in games of chance without having valid identity documents in their possession;
- b* the gambling organiser, without distinction between land-based or online activities, does not pay the participants the winnings obtained in the activity of gambling in three working days, provided that the conditions imposed to the participant in relation to the proof of winnings are fulfilled; or

- c* the gambling organiser, without distinction between land-based or online activities, fails to notify the NGO of any modifications that have occurred to the data on the basis of which the licence and the authorisation were issued by the NGO, within a certain time frame.

The failure of the gambling organiser to comply with the legal requirements can also lead to the suspension or revocation of the licence by the NGO's Supervisory Committee.

The operation of games of chance without being granted with the required licence and authorisation constitutes a criminal offence and shall be punished with imprisonment from one month to one year or with a fine. Additional sanctions applicable for the criminal offence of unlicensed gambling are that the gambling operator would be dissolved and the amounts derived from the unlawful activity would be confiscated.

Criminal liability may be also triggered when the following gaming products are offered to the players:

- a* fraudulent games of chance;
- b* games of chance through radio channels or through other assimilated transmission means;
- c* games of chance based on the results of clandestine competitions (such as dog fighting, which is expressly forbidden by the Romanian legislation, illegal car racing, etc.);
- d* clandestine games of chance, the results of which, rather than being random, are influenced by the skill of the person handling the game for the purpose of obtaining revenues; and
- e* competition games with winnings of any type through telephone lines or other communication systems, television or radio where the obtaining of prizes is based solely on the accuracy of the answers provided to general questions, which involve a participation fee.

The criminal liability of those involved in money transfers for gambling is not subject to the specific gambling legislation and is to be assessed on a case-by-case basis, as such a situation also has potential implications related to anti-money laundering regulations.

With regard to ISPs, based on the provisions of GEO 77/2009, such are obliged to observe the NGO decisions and ban access to the unlicensed gambling websites included on the regulator's blacklist. Non-observance of this obligation triggers the administrative liability of ISPs, which face a fine ranging from 50,000 lei to 100,000 lei.

With respect to participants in games of chance, according to GEO 77/2009 any individual who participates in Romania in the activity of remote games of chance operated by an unlicensed or unauthorised operator shall face administrative fines ranging from 5,000 lei to 10,000 lei, thus triggering the administrative liability of the player (but not criminal liability).

#### **IV WRONGDOING**

One of the main principles governing gambling activity consists of permanently ensuring the prevention and control of criminal activities that may be performed by accessing gambling services.

In what concerns the obligations imposed by the anti-money laundering regulations, the Romanian AML Office, in an official response to a request for clarification, has stipulated

that the Romanian AML law currently in force (which transposes the 3rd AML Directive) is applicable only for casino operators incorporated as Romanian legal entities and not also for other categories of gambling operators (e.g., foreign online operators licensed in Romania). Through the same response, the AML Office indicated that the national legislation that will transpose the 4th AML Directive will also be applicable only for Romanian-based entities or Romanian citizens.

## V TAXATION

From a fiscal point of view, land-based gambling operators that operate in Romania are subject to a 16 per cent profit tax (which is for all types of businesses and not specific to gambling), in addition to any other fiscal obligations imposed under the Romanian Fiscal Code. The Fiscal Code provides for an exception in what concerns land-based casinos, where it is stated that this category may be subject to a 5 per cent turnover tax in case the profit tax is less than 5 per cent of their revenues.

Online gambling operators are subject to corporate tax in Romania only if they are Romanian fiscal residents or if they create a permanent establishment in Romania. Otherwise, the non-resident gambling operator owes income tax in the country of establishment and will be required to pay the annual licence and authorisation fees in Romania, as well as a contribution to the fund for responsible gambling.

In Romania, the revenues obtained by the players are subject to tax charges. In case of land-based games, the operator is required to withhold the applicable tax and subsequently pay such to the state budget. In case of online games, currently, a different taxation system is still applicable in the sense that each player is bound to execute individually the tax duties imposed by the Romanian authorities. However, as at the time of writing, the Romanian government is in the advanced stages of enacting a Government Emergency Ordinance for the amendment of the Fiscal Code, which aims to reintroduce the withholding tax mechanism also for the revenues obtained by the players from online games.

## VI ADVERTISING AND MARKETING

The advertising of gambling activities performed in Romania by licensed gambling operators is permitted, provided that the principles regarding protection of minors and responsible gambling are observed.

The Romanian authorities have recently taken certain actions in relation to gambling advertising. The National Audiovisual Council has issued a generic decision in which TV advertising for gambling should be broadcast only during restricted time frames to observe the principle of protecting minors with regard to the audiovisual field.

Further, the NGO has recently published the Code of Ethics on Responsible Communication in Gambling, which includes several restrictive guidelines regarding gambling advertising. However, subsequent to its publication, the NGO clarified that this Code of Ethics is not a legally binding instrument, being issued only for consultation purposes. While it seems that the rules provided by the Code of Ethics are not mandatory, the regulator encourages the operators to voluntarily adopt such.

## **VII THE YEAR IN REVIEW**

The Romanian gambling market has shown a steady growth in the past 12 months and, at the time of writing, there are 22 operators licensed for online gambling, over 270 operators licensed for land-based slot-machine gaming and more than 300 Class II licences have been granted by the NGO for the entire spectre of activities subject to the licensing requirement.

## **VIII OUTLOOK**

Currently, the Romanian gambling market is facing several legislative modifications. First, it seems that the reintroduction of the withholding tax system for the revenues obtained by the players from online gambling is rather imminent. Secondly, the 4th AML Directive is still to be transposed into the national legislation and, once enacted, the new AML legislation might generate a significant impact for the activities of the gambling operators that fall under its scope of application. Last, but not least, it cannot be overlooked that the Romanian authorities have started to be more attentive with regard to responsible gambling matters, as well as advertising conditions for gambling activities.



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Partner Ana-Maria Baciu co-heads Nestor Nestor Diculescu Kingston Petersen's gaming practice. She has over 19 years of professional expertise, including 12 years of experience in assisting clients in the gaming sector. She also coordinates the firm's IP practice and co-heads the consumer protection and advertising practice.

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