

UPCOMING CHANGES IN BRAZIL'S GAMBLING REGULATION: A BLUE OCEAN MARKET TO INVEST

Gambling is forbidden in Brazil, except for official lotteries and authorized horse racing. This situation is expected to change in the upcoming months, as old rules have been made more flexible and new bills to ease restrictions are in debate by Congress and Government.

A ban on gambling has been in place in Brazil since the decade of 1940, according to Decree-Law 3688, known as the Law of Misdemeanours. Since then, setting up or exploiting gambling activities (the so-called “games of chance”) in a public place has been an offense subject to imprisonment and payment of a fine. The latter also applies to the participants of these activities.

The concept of games of chance is broad and encompasses sporting bets. However, in 2018, Law 13756 created the so called Fixed Odd Bets (Apostas de Quota Fixa), a lottery for sports events in which the gambler knows exactly how much they could earn. Private companies that are now allowed to exploit such activity are eager for its regulation, which according to the law, shall be enacted by the Ministry of Economy by December of 2020.

But more ambitious initiatives are on course, and if approved they would decriminalize games of chance in Brazil. In particular, two initiatives are expected to pass in Congress in the first half of 2020: Bill of Law No. 442/1991 and Bill of Law No. 186/2014. The former has the support of the President of the Chamber of Deputies, whereas the latter is ready to be voted in the Senate's plenary meeting.

Not only the private sector is eager to exploit the Brazilian gambling market; also the Government is fostering this move as it foresees tax gains and an increase in employment opportunities. According to the Brazilian National Confederation of Commerce of Goods, Services and Tourism (CNC) in a study of 2016, this market would have an annual turnover of BRL 55.3 bn (currently around US\$ 13.6 bn), which would correspond to BRL 16.5 bn (US\$ 4.06 bn) in taxes per year.

Conversely, the Federal Prosecutors Office is concerned that gambling establishments could be used to money laundering and that the supervisory bodies would not have the appropriate tools and trained staff to prevent it. In addition, some Congress members are reluctant to the gambling legalization, in particular those that have strong religious constituencies. Some of them support alternatives such as to allow the exploitation of bingos and casinos only inside resorts or to delegate to states the powers to regulate whether, how and when they should operate.

Even before the Law of Misdemeanours is amended, however, there are some legal loopholes that may benefit companies willing to access the Brazilian market offering online gambling services. The law specifies the places considered “of public access” without including “internet” or other language that could encompass online gambling. As criminal law must be construed literally, some companies are offering gambling activities online because they understand it should not be considered a violation of the current law. The same conclusion does not apply to the participants that engage in such activities, since the law was amended in 2015 and the new wording targets expressly them.

This matter will be a hot topic in the next few months and the legislative developments should be followed closely by those willing to expand their businesses in the Brazilian gambling market.

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