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# Gaming Law 2021

Switzerland: Law & Practice  
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# SWITZERLAND

## Law and Practice

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## 1. INTRODUCTION

### 1.1 Current Outlook

On 1 January 2019, a new Gaming Act and four related ordinances entered into effect:

- the Gaming Ordinance;
- the Casino Ordinance; and
- two anti-money laundering ordinances.

The enforcement measures against unlicensed operators have only been applicable since 1 July 2019.

Under the new act, only domestic casinos and lotteries can legally operate online games of chance. These incumbent operators, however, can co-operate with international B2Bs and B2Cs, provided that certain legal requirements are met.

At the time of writing, 11 casinos had received an extension of their licence to offer online games. There is continued and substantial interest in business co-operation from international B2Bs and B2Cs as well as domestic casinos. This is not surprising given the high value of the Swiss online gaming market and the only recently acquired experience of the domestic casinos in the online sphere. Accordingly, the opportunities in a market with only a few licensed offerings are substantial.

### 1.2 Recent Changes

The recent legislative change constituted a complete overhaul of the legislative framework, replacing the formerly applicable Casino Act and Lottery Act with the new Gaming Act (*Geldspielgesetz*). For the first time, legislation was passed that comprehensively addresses both bricks-and-mortar and remote forms of gaming as well as skill gaming. As a consequence, the cantons also had to pass implementing legislation at regional level in the past year.

COVID-19 restrictions have heavily impacted the bricks-and-mortar revenues in the past one and a half years. When federal and cantonal governments lifted restrictions, the land-based casinos have been among the last business sectors to be permitted to reopen. By contrast, those casinos already operating an online platform were able to rely on these revenues. While elsewhere in Europe, regulators abruptly imposed restrictions on advertising, this has not been the case in Switzerland.

In February 2021, a new president of the Federal Gaming Board (casino regulator) took office. In June 2021, the long-time director of the same authority stepped down from his office. The new director is likely to be announced at the end of 2021 or beginning of 2022. The Federal Gaming Board is a two-tier authority with the full-time Secretariat headed by a director and the part-time Commission headed by a president.

## 2. JURISDICTIONAL OVERVIEW

### 2.1 Online Betting

Large-scale betting services can be offered exclusively by the two public lotteries: Swisslos and Loterie Romande.

#### Bingo

Large-scale bingo services can be offered exclusively by the two public lotteries.

#### Casino

Casino services can be offered exclusively by the licensed bricks-and-mortar casinos.

#### Lotteries

Large-scale lottery services can be offered exclusively by the two public lotteries.

## Fantasy Sports

Given the legislative criteria, fantasy sports are likely to qualify as skill games, in which case a skill game operator is required to apply for a licence from the regulator, Gespa.

## Social Gaming

Social gaming does not fall within the ambit of the Gaming Act if it does not include the elements of consideration and/or a prize.

## Poker

Similar to casino games, online poker services can be offered by the licensed bricks-and-mortar casinos, which can partner with other domestic casinos as well as international poker platforms. International shared liquidity is permitted under the applicable gaming laws.

## Other Relevant Sectors

With the entry into effect of the Gaming Act, all games of chance and games of skill are, in principle, regulated and can also be offered online, subject to certain conditions and exclusive rights. So-called major (or large-scale) games (*Grossspiele*) include lotteries, sports betting and games of skill if they are operated online, automatically or inter-regionally (between cantons). With few exceptions, the two public lotteries hold the exclusive right to offer online games in the areas of lotteries and betting. By contrast, any skill gaming operator can apply for a licence, provided that it also seeks establishment in Switzerland. Under strict conditions, media publishers and shops may organise lotteries and games of skill without a licence or authorisation.

## 2.2 Land-Based

Overall and with few exceptions, similar exclusive rights and conditions apply in the land-based sector as in the online sector (see **2.1 Online**).

## Betting

Large-scale betting services can be offered exclusively by the two public lotteries: Swisslos and Loterie Romande.

## Bingo

Large-scale bingo services can be offered exclusively by the two public lotteries.

## Casino

Casino services can be offered exclusively by the licensed bricks-and-mortar casinos. Currently, there are 21 licensed casinos in Switzerland.

## Lotteries

With few exceptions, large-scale lottery services can be offered exclusively by the two public lotteries.

## Fantasy Sports

Given the legislative criteria, fantasy sports are likely to qualify as skill games. If they are operated online, automatically or inter-regionally (between cantons), a licence from Gespa is required.

## Social Gaming

Social gaming does not fall within the ambit of the Gaming Act if it does not include the elements of consideration and/or a prize.

## Poker

Similar to casino games, the licensed bricks-and-mortar casinos can offer land-based poker services, but no longer have the exclusive right to do so. The large majority of cantons have passed legislation that permits so-called small poker tournaments and they grant authorisations to poker operators that wish to organise such tournaments.

**Other Relevant Sectors**

Please see the comments under **2.1 Online**, which apply in similar terms for the land-based sphere. Skill gaming operations only require a licence if they are organised online, automatically or inter-regionally (between cantons). Under strict conditions, media publishers and shops may organise lotteries and games of skill without a licence or authorisation.

**3. LEGISLATIVE FRAMEWORK****3.1 Key Legislation**

In September 2017, the Swiss parliament passed a fully revised Gaming Act. A referendum was organised against the Act, but the voters adopted the Act. On 1 January 2019, it entered into effect along with four related ordinances:

- the Gaming Ordinance;
- the Casino Ordinance; and
- two anti-money laundering ordinances.

The Gaming Act serves as the legal framework for all games that involve consideration and prizes. It brought significant changes as it regulates online games and replaces all formerly applicable federal gaming laws (mainly the Lottery Act and the Casino Act).

**Primary Law**

- The Gaming Act (*Geldspielgesetz, Loi fédérale sur les jeux d'argent, Legge federale sui giochi in denaro*) was passed by the federal parliament on 29 September 2017 and entered into force on 1 January 2019.

**Secondary Law**

- The Gaming Ordinance (*Geldspielverordnung, Ordonnance sur les jeux d'argent, Ordinanza sui giochi in denaro*) was passed by the

federal government on 7 November 2018 and entered into force on 1 January 2019.

- The Casino Ordinance (*Spielbankenverordnung – EJPD, Ordonnance du DFJP sur les maisons de jeu, Ordinanza del DFGP sulle case da gioco*) was passed by the Federal Department of Justice and Police (EJPD) on 7 November 2018 and entered into force on 1 January 2019.
- The Money Laundering Ordinance (*Geldwäschereiverordnung – EJPD, Ordonnance du DFJP sur le blanchiment d'argent, Ordinanza del DFGP sul riciclaggio di denaro*) was passed by the EJPD on 7 November 2018 and entered into force on 1 January 2019.
- The Money Laundering Ordinance (*Geldwäschereiverordnung – ESBK, Ordonnance du CFMJ sur le blanchiment d'argent, Ordinanza del CFCG sul riciclaggio di denaro*) was passed by the Federal Gaming Board (ESBK) on 12 November 2018 and entered into force on 1 January 2019.

Furthermore, these federal laws have been implemented in revised cantonal laws.

**3.2 Definition of Gambling**

While the Gaming Act does not define “gambling” as such, it addresses “money games” in Article 3(a), which are defined as games in which a prize or something of monetary value can be expected in exchange for a stake (money or money’s worth) or by the conclusion of a legal act or transaction (German version: *Spiele, bei denen gegen Leistung eines geldwerten Einsatzes oder bei Abschluss eines Rechtsgeschäfts ein Geldgewinn oder ein anderer geldwerter Vorteil in Aussicht steht*; French version: *les jeux qui, moyennant une mise d'argent ou la conclusion d'un acte juridique, laissent espérer un gain pécuniaire ou un autre avantage appréciable en argent*; Italian version: *i giochi che, fatta una posta pecuniaria o concluso un negozio giuridico,*

*prospettano la possibilità di una vincita in denaro o di un altro vantaggio pecuniario).*

### 3.3 Definition of Land-Based Gambling

There is no specific definition of land-based gambling. Please see **3.2 Definition of Gambling**.

### 3.4 Definition of Online Gambling

There is no specific definition of online gambling. Please see **3.2 Definition of Gambling**.

### 3.5 Key Offences

The key offences that can be committed are as follows:

- operating, organising or providing casino games or large-scale games without the necessary licences or authorisations (Article 130(1)(a), Gaming Act);
- providing the technical means for the organisation of casino games or large-scale games, being aware of the intended use, to persons who do not hold the required licences or authorisations (Article 130(1)(b), Gaming Act); and
- obtaining a licence or authorisation by way of providing false information or in similar deceptive ways (Article 130(3), Gaming Act).

### 3.6 Penalties for Unlawful Gambling

According to Article 130(1) of the Gaming Act, a person who intentionally commits the criminal offence of organising casino or large-scale games, or of providing the technical means for such operations, shall be punished with a custodial sentence of up to three years or a fine. According to Article 130(2) of the Gaming Act, the penalty shall be imprisonment for up to five years or a fine of not less than 180 daily rates if the offence is committed with a commercial interest or as an organised form of crime.

Finally, Article 130(3) of the Gaming Act states that a fine of up to 180 daily rates shall be imposed on anyone who deliberately obtains a licence or authorisation by way of false information. Other criminal offences such as advertising only qualify as misdemeanours and are subject to a maximum fine of CHF500,000.

### 3.7 Pending Legislation

The gaming laws have been passed at federal level and most cantons have passed related cantonal laws within the two-year time limit set forth by the Gaming Act. The federal parliament also passed a new data protection act (Federal Law on Data Protection), which is expected to enter into effect in 2022.

## 4. LICENSING AND REGULATORY FRAMEWORK

### 4.1 Regulatory Authority

The ESBK has regulatory oversight over the casino sector. The Swiss Gambling Supervisory Authority, Gespa (formerly Comlot), is an inter-cantonal authority that has regulatory oversight over the lottery and betting market on behalf of the cantons. The EJPD and the cantonal supervisory authorities also hold certain regulatory powers.

### 4.2 Regulatory Approach

Switzerland has largely adopted a protectionist approach in the area of games of chance, with the incumbent domestic B2Cs enjoying exclusive operating rights. By contrast, this is not the case in the field of games of skill. Overall, the Gaming Act installed a regulatory regime in which licensed land-based games of chance operators can also offer their games online.

As was already the case under the old law, the market is split into three sectors: lottery and betting; casino; and skill. The two public lotteries

– Swisslos and Loterie Romande – continue to enjoy far-reaching exclusive rights in the lottery and betting sector. Similarly, only land-based casinos can legally operate casino games. The exclusive rights of the lotteries and casinos apply in relation to both land-based and online games, with few exceptions, such as for land-based small poker tournaments. Furthermore, the cantons continue to hold the powers to regulate skill games in more detail.

### 4.3 Types of Licences

Following the completion of a vetting procedure undertaken by the Federal Gaming Board, the federal government grants licences to successful casino applicants. Since these licences represent so-called concessions, applicants have no enforceable right to be granted a land-based licence.

In the lottery and sports betting sectors, the cantons have granted Swisslos and Loterie Romande the exclusive right to offer these games. The cantons are the owners of these two entities.

In relation to online games of chance, the Gaming Act provides for the possibility for international B2Cs and B2Bs to co-operate as business partners with the casinos and lotteries. In the skill gaming sector, independent authorisations are available to B2Cs and a liberal licensing regime applies, whereby online and/or land-based applicants are granted a licence when they meet the legislative requirements.

### 4.4 Availability of Licences

According to Article 9 of the Gaming Act, the federal government shall extend the casino bricks-and-mortar licence to include the right to conduct casino games online if the applicant fulfils the conditions set out in Article 8(1)(a)(1) to (4) and (b) to (d) with regard to the online offering. International business partners of domestic casinos and lotteries cannot be granted a

licence, and do not need one. The licence application and/or extension is carried out through the domestic operator.

In the skill gaming sector, by contrast, international operators do not need to co-operate with incumbent domestic entities and can apply independently for a skill gaming licence.

### 4.5 Duration of Licences

According to Article 12 of the Gaming Act, the licence for casino operations is valid for 20 years. In special circumstances, the federal government may provide a licence for a shorter or longer period. The licence may be extended or renewed. With regard to large-scale games, the operator's licence and game authorisations (*Veranstalter- und Spielbewilligung*) may be limited in time and renewed; the same is true for small-scale games (*Kleinspiele*).

### 4.6 Application Requirements

According to Article 8 of the Gaming Act, a licence for casino operations may be granted if:

- the applicant:
  - (a) is a public limited company under Swiss law and its share capital is divided into registered shares;
  - (b) presents a security concept and social concept;
  - (c) submits economic viability calculations that credibly show that the casino is economically viable;
  - (d) sets out the measures to be taken to create the conditions for the proper assessment of the casino duties; and
  - (e) presents the economic benefits of the casino for the region in a report;
- the applicant and its main business partners, as well as their beneficial owners and the holders of shares and their beneficial owners, have a good reputation and provide a

- guarantee of proper business conduct and independent management;
- the applicant, the holders of shares, the beneficial owners of the shares and, at the request of the ESBK, the most important business partners have sufficient funds of their own and can prove the lawful origin of the available funds;
- the by-laws, the organisational structure and the contractual obligations guarantee the proper and independent conduct of the casino business; and
- the canton and municipality in which the location is located support the operation of a casino.

Large-scale games such as lotteries, sports betting and skill gaming require inter-cantonal authorisation and are subject to supervision by the inter-cantonal authority Gespa. Small-scale games only require cantonal approval. While the Gaming Act further outlines the conditions under which operations of (large-scale) lotteries and betting can be authorised, the cantons have de facto monopolised this sector, and Gespa cannot grant further licences to other applicants. The conditions outlined under Article 22 of the Gaming Act are therefore of interest primarily to skill game operators. Such authorisation can be granted if the operator:

- is a legal entity under Swiss law;
- enjoys a good reputation;
- outlines its economic situation;
- discloses any financial or other form of participation in other companies;
- proves the lawful origin of the available funds;
- guarantees impeccable management and its independence vis-à-vis third parties;
- has sufficient funds and guarantees that the winnings are paid out to the players; and
- has a security concept and a social concept.

## Key Differences between Application Requirements for Land-Based and Online Operators

According to Article 9 of the Gaming Act, the federal government may extend the land-based casino licence to include the right to conduct casino games online if the applicant fulfils the conditions set out in Article 8(1)(a)(1) to (4) and (b) to (d) with regard to the online offer. Such application may also be submitted during the ongoing licence term. Various technical requirements must be met in order to be allowed to offer online casino games. According to the Gaming Ordinance, the EJPD can issue technical requirements, notably in relation to games, jackpots, online gaming platforms, jackpot systems, the electronic accounting and control system (EAKS) and the data recording system (DZS).

It is noteworthy that the international business partners of land-based casinos and lotteries do not need to seek establishment in Switzerland, but online skill gaming operators must do so in order to qualify for a licence.

## Key Application Requirements for Directors, Owners or Senior Management

The main business partners of casinos must, inter alia, fulfil the following criteria.

- Good reputation – the main business partners must, in principle, fulfil the “good reputation” criterion. Beyond a mere fit and proper test, former market activities in Switzerland are considered to be relevant by law. The regulator has interpreted this criterion strictly in relation to casino partnerships and for the duration of a five-year cool-down period.
- Sound business conduct and independent management – the law demands that the main business partners must guarantee sound business conduct and independent management.

- No outsourcing of important tasks – the law obliges casinos to fulfil the central activities of all the important tasks by themselves. These important tasks, defined by law, cannot be outsourced to international business partners. White-label solutions, in particular, are not permissible under Swiss law.
- No revenue share based on gross gaming revenue (GGR) or turnover – the law prohibits the compensation of business partners based on GGR or turnover. Game providers only are exempted from this rule, and their remuneration must be appropriate/reasonable according to the law.

#### **Key Application Requirements for Shareholders, including Disclosure Thresholds**

Shareholders and their beneficial owners need to have a good reputation and provide a guarantee for proper business conduct and independent management. Moreover, shareholders and the beneficial owners of the shares need to have sufficient funds of their own and be able to prove the lawful origin of the available funds.

According to Article 13 (b) and (c) of the Gaming Act, the casino licensee reports to the Federal Gaming Board the name or company name and address of shareholders holding more than 5% of the share in relation to capital or votes, and any amendments to the share in relation to capital or voting rights as well as the identity details referred to above.

#### **4.7 Application Timing**

There are no specific application windows for online licences in Switzerland. By contrast, land-based casino licences run for a duration of 20 years, in principle, after which existing and new applicants can apply for a licence. By the end of 2024, all thus far granted casino licences will run out. Incumbent and new applicants for casino licences should expect the federal gov-

ernment to take decisions regarding the number and kinds of licences in spring 2022. It is further expected that the federal government will grant the actual licences in autumn 2023.

#### **4.8 Application Fees**

There are no fixed licensing costs defined by law for any game categories. The Federal Gaming Board must assess whether the application meets the legal criteria. According to Article 102 of the Gaming Ordinance, the costs ultimately depend on the time and effort spent by the regulator to assess the application, and vary between CHF100 and CHF350 per hour.

#### **4.9 Ongoing Annual Fees**

According to Article 106 of the Gaming Ordinance, the supervisory costs consist of the costs of the Federal Gaming Board and of the services of other offices that it uses. The Gaming Ordinance outlines the details of the calculation, and the amount is defined on an annual basis by the EJPD.

The 2020 All Switzerland Gaming Convention is an inter-cantonal agreement of all cantons in which they further regulate the Swiss lottery and betting market, notably the regulatory authority Gespa and their administrative fees. The inter-cantonal convention entered into effect on 1 January 2021. Gespa can raise fees according to its fee regulations. The latter needs to be approved by the united finance ministers of the cantons. The present Fee Regulations were adopted on 21 January 2021.

## **5. LAND-BASED GAMBLING**

### **5.1 Premises Licensing**

According to Article 7 of the Gaming Act, the casinos are geographically distributed as evenly as possible among the interested regions within Switzerland. The law further requires that the

respective canton and the municipality in which the casino premises are to be located politically support the operation of a casino. Moreover, the licence can only be granted if the applicant clearly outlines the economic benefits of the casino for the region at hand.

## 5.2 Recent or Forthcoming Changes

While the Gaming Act did not alter the essence of the regulatory regime applicable to land-based casinos, it did bring a certain regulatory easement; for instance, in relation to casinos in the mountain areas that only need to staff table games during part of the year.

In relation to the public lotteries, their portfolio has been substantially widened and they are at least legally permitted to offer a more attractive sportsbook than before the legislative overhaul. Finally, online skill gaming operators are able to apply for an inter-cantonal authorisation from Gespa.

## 6. ONLINE GAMBLING

### 6.1 B2C Licences

According to the law, casino licences are granted for 20 years, in principle. Currently, there are 21 casinos throughout Switzerland, mostly (co-)owned by a few casino groups. Prior to the expiry of the licences, the federal government reopens a public tender, which is open for both existing and new applicants. There is no enforceable right for applicants to be granted a licence since the government can decide on the number of “concessions” that it distributes. For more details, please see **4. Licensing and Regulatory Framework**.

The cantons have monopolised the area of lottery and sports betting, and only two licences are granted to large-scale lotteries: Swisslos for

the German and Italian part of Switzerland, and Loterie Romande for the French-speaking part.

In relation to skill gaming operators, Gespa holds the powers to grant licences and such licences are to be granted when the applicant meets the legal requirements.

### 6.2 B2B Licences (Suppliers, Software, Etc)

International B2Cs and B2Bs can enter into business agreements with domestic casinos and lotteries. However, irrespective of their services, these partners do not need to secure a licence, nor can they qualify for a licence. If they are considered as main business partners, they will need to fulfil the so-called good reputation criterion, the assessment of which also depends on former market activities in the grey market. For more details, please see **4. Licensing and Regulatory Framework**.

### 6.3 Affiliates

The use of affiliates is not addressed by the Gaming Act, nor are there specific licences available for affiliates.

### 6.4 White Labels

The law obliges the casinos to fulfil the central activities of all the important tasks by themselves. Notably, white-label solutions are not permissible.

### 6.5 Recent or Forthcoming Changes

The Gaming Act brought significant changes to the online sphere, enabling the whole range of online games to be offered, in principle.

### 6.6 Technical Measures

Unlicensed online operators are expected to geo-block players residing in Switzerland. If the ESBK or Gespa becomes aware of an unlicensed Switzerland-facing website, it can send a warning letter to the operator and/or put the website

on its blacklist. Swiss internet service providers (ISPs) are then requested to block these websites. Updated blacklists are published by both the ESBK and Gespa on a regular basis.

So far, the regulatory authorities have shown little appetite to try criminal law as a means of enforcement against unlicensed websites. Although payment blocking was discussed during the long legislative process, payment blocking measures were not adopted by the parliament and are therefore not in use.

## **7. RESPONSIBLE GAMBLING (RG)**

### **7.1 RG Requirements**

Responsible gambling is among the central goals defined by the Gaming Act, whereby the population shall be appropriately protected from the “dangers” stemming from gambling and gaming. The law further demands that online casino games and large-scale games shall be accompanied by appropriate measures for player protection. Applicants for a casino licence as well as the lotteries must submit both a security concept and a social concept; the latter must notably outline how the casino intends to ensure the protection of players not only from problem gambling (in a medical and psychiatric sense) but also from excessive gambling (that is, spending beyond a player’s financial means).

The operators must outline which measures they intend to implement to inform players and to identify problem gamblers early on, and must outline which measures they will adopt regarding self-control, game limitation and moderation, the application of exclusions, the training and continued education of the staff in charge of implementing the social concept, and the collection of data to evaluate the effectiveness of such measures. In doing so, the casinos and lot-

teries regularly collaborate with researchers, and prevention and treatment centres.

### **7.2 Gambling Management Tools**

Gambling management tools include the possibility of self-exclusion as well as exclusion by the operator, both online and in bricks-and-mortar casinos. The law further requires that the online player has easy access to information regarding their gaming behaviour. When opening a player account, the online player is required to define maximum amounts of what they are willing to wager per day, week or month. This requirement is mandatory for casinos, but not for operators of large-scale games. The player can further define a cool-down period, during which they can choose not to play a certain category or any type of game.

Operators are further required to provide specific information to players and to identify problematic gambling behaviour early on and act swiftly and appropriately. Finally, prevention and treatment centres also pursue their own efforts and provide online self-control tools to players.

## **8. ANTI-MONEY LAUNDERING (AML)**

### **8.1 AML Legislation**

According to Article 67(1) of the Gaming Act, the casinos and the operators of large-scale games are subject to the Money Laundering Act (*Geldwäschereigesetz, Loi sur le blanchiment d’argent, Legge sul riciclaggio di denaro*), which was passed by the federal parliament on 10 October 1997 and entered into force on 1 April 1998. The Money Laundering Act has been most recently revised on 19 March 2021 by the federal parliament.

The provisions of the Money Laundering Act were further outlined and detailed in second-

ary law, in the Money Laundering Ordinance (*Geldwäschereiverordnung*, *Ordonnance sur le blanchiment d'argent*, *Ordinanza sul riciclaggio di denaro*), which was passed by the federal government (the Federal Council) on 11 November 2015 and entered into force on 1 January 2016. Subsequent to the amendments in relation to the Money Laundering Act, the Money Laundering Ordinance and related ordinances are currently being revised and a public consultation was started on 1 October 2021 that ends on 17 January 2022.

Furthermore, the following ordinances apply specifically in the gambling and gaming sector as *leges speciales* (special laws):

- the Money Laundering Ordinance (*Geldwäschereiverordnung* – EJPD, *Ordonnance du DFJP sur le blanchiment d'argent*, *Ordinanza del DFGP sul riciclaggio di denaro*), which was passed by the EJPD on 7 November 2018 and entered into force on 1 January 2019; and
- the Money Laundering Ordinance (*Geldwäschereiverordnung* – ESBK, *Ordonnance de la CFMJ sur le blanchiment d'argent*, *Ordinanza della CFCG sul riciclaggio di denaro*), which was passed by the ESBK on 12 November 2018 and entered into force on 1 January 2019.

## 8.2 AML Requirements

AML requirements from other Financial Action Task Force (FATF) jurisdictions apply similarly in Switzerland. The Gaming Act deals with AML in its fourth chapter. However, the thresholds that trigger enhanced customer due diligence (CDD) obligations are significantly higher in Switzerland compared to the AML directives of the EU (which apply to both the land-based and remote gambling sectors), as illustrated by the example of online games. According to Article 68 of the Gaming Act, the online player must be identified

in accordance with the provisions of the AML Act if monthly stakes or the individual or aggregated winnings per month reach a significant value. The Federal Gaming Board defines that value for the casino sector, and the EJPD defines it for the large-scale game sector.

Casinos must apply the enhanced CDD measures (identification and registration) if the player reaches the threshold of CHF4,000 within 24 hours, with one or more transactions, either by pay-ins to their player account or by payouts to their bank account. In the area of large-scale games – which include online lottery, betting and skill gaming – the threshold for enhanced CDD (identification and registration) applies if the player reaches CHF15,000 by way of pay-ins to their player account or CHF10,000 and CHF25,000 respectively by way of payouts to their bank account (depending on the odds that applied to the game), in one or several transactions within 30 days.

Article 69 of the Gaming Act specifically stipulates that casinos and operators of large-scale games may not accept or issue bearer cheques. While they may accept cheques made out in their name, they have to verify the identity of the person issuing the cheque and register the transaction. Winnings can be made available to the players in a deposit account, but no interest can be paid on this deposit account. Finally, it is prohibited for casinos to issue any written confirmation of winnings to the players.

## 9. ADVERTISING

### 9.1 Regulatory/Supervisory Agency

The ESBK has regulatory oversight over the casino sector, and Gespa has regulatory oversight over the lottery and betting market on behalf of the cantons. The same powers apply accordingly in relation to advertising and the

regulatory oversight of it. Finally, it is possible for the Federal Office of Communication (*Bundesamt für Kommunikation*, or BAKOM) to have regulatory oversight as well, in certain circumstances involving broadcasters of TV, radio or internet programmes.

### 9.2 Definition of Advertising

Neither the Gaming Act, its ordinances nor the Federal Act against Unfair Competition define the term “advertising”. The Swiss judiciary rightly noted that Swiss law did not define advertising and accordingly referred to a definition provided by the Federal Commission on Fair Trading (*Lauterkeitskommission*): “Commercial communication shall mean any measure taken by competitors or third parties who systematically influence a majority of people in their attitudes to particular goods, works, services or business relationships for the purpose of concluding or preventing a transaction” (Judgment of 15 June 2017 of the *Cour de Justice de Genève* : ACPR/397/2017, pt. 4.2).

### 9.3 Key Legal, Regulatory and Licensing Provisions

In order to be able to conduct casino or large-scale games, a licence/authorisation is required in accordance with the requirements of Articles 8 and 22 of the Gaming Act. One of the key regulatory requirements concerns the composition and submission of a security concept (*Sicherheitskonzept*) and a social concept (*Sozialkonzept*). The way a licensed operator wishes to communicate commercially and responsibly with its customers and potential customers should be addressed in the social concept.

Articles 22(1)(i), 74, 131(1)(b) and (c) of the Gaming Act and Articles 27(2) and 76–78 of the Gaming Ordinance deal with advertisements. The key provisions will be dealt with further in the following sections.

### 9.4 Restrictions on Advertising

Advertising restrictions apply to licensed operators. According to Article 74 of the Gaming Act, gaming operators may not advertise in an obtrusive or misleading manner, and advertising may not be directed at minors or persons who have been barred from gambling. The Gaming Ordinance further details what misleading and obtrusive practices mean.

According to Article 77(1) of the Gaming Ordinance, advertising messages are considered misleading, in particular, if they give distorting information about the chances of winning or possible winnings, or convey the impression that:

- knowledge, ability, skill or other characteristics of the player influence the chances of winning, without this being the case due to the nature of the game;
- the chances of winning are increased by longer or more frequent play;
- money games are an appropriate means of solving financial or personal problems;
- participation in gambling is an alternative to a working life; or
- increased participation in gambling is an appropriate means to compensate losses already incurred.

According to Article 77(2) of the Gaming Ordinance, the following, in particular, shall be regarded as obtrusive:

- telephone sales activities;
- sales activities in residential premises or their immediate vicinity, on public transport and at marketing events related to excursions or similar events;
- personally addressed advertising via electronic channels without the possibility of opting out or unsubscribing; and

- advertising by means of push messages based on the electronic localisation of a mobile device of the player or other forms of personally addressed advertising via electronic channels based on such localisation.

Pursuant to Article 74(3) of the Gaming Act, advertising for games not licensed in Switzerland is prohibited, as is indirect advertisement; ie, the advertising of free gaming offers. According to Article 76 of the Gaming Ordinance, advertising for games that do not require any stake or do not result in the distribution of prizes is subject to the restrictions and prohibitions set forth in Article 74 of the Gaming Act if:

- the games are offered by an operator whose main offer consists of games involving stakes and prizes; and
- the player can detect a connection between games without stakes and prizes and games including stakes and prizes offered by the same operator.

## 9.5 Sanctions/Penalties

Pursuant to Article 131(1) of the Gaming Act, a fine of up to CHF500,000 can be imposed on anyone who intentionally advertises games that are not authorised in Switzerland, or who advertises licensed games by aiming the advertising at minors or persons who are barred from playing.

## 10. ACQUISITIONS AND CHANGES OF CONTROL

### 10.1 Disclosure Requirements

According to Article 13 of the Gaming Act, the licensee must notify the ESBK of:

- all significant changes to the licensing conditions;

- the name or company name and address of shareholders holding more than 5% of the shareholder capital or the votes; and
- any changes in shareholder capital or voting rights, or in the identity information referred to under **4.6 Application Requirements**.

### 10.2 Change of Corporate Control Triggers

As already noted, Article 13(b) of the Gaming Act requires the licensee to notify the ESBK of the name or company name and address of shareholders holding more than 5% of the shareholder capital or votes. Furthermore, Article 7(1) of the Gaming Ordinance holds that “beneficial owners” are persons whose direct or indirect participation in the applicant’s shareholder capital amounts to at least 5%, as well as persons or groups of persons associated with voting rights who hold at least 5% of all voting rights. The same provision requires that persons holding such a participation shall inform the ESBK of whether they hold the participation for themselves or on a fiduciary basis for third parties, and whether they have granted options or similar rights to others for such participation.

### 10.3 Passive Investors Requirements

Please see **10.2 Change of Corporate Control Triggers**.

## 11. ENFORCEMENT

### 11.1 Powers

The ESBK is the supervisory authority in the casino sector and monitors compliance with casino regulations and licensing requirements; it also takes enforcement actions against illegal gambling. Pursuant to Article 97(1)(d) of the Gaming Act, the ESBK co-operates with domestic and foreign supervisory authorities. Its powers of enforcement are of both an administrative law and a criminal law nature. As per administra-

tive law, the ESBK can send warning letters to unlicensed online operators and put their websites on a blacklist; ISPs are then required to block these websites. As per criminal law, the ESBK can prosecute illegal gambling offers by opening criminal proceedings and collaborating with other domestic enforcement offices.

In the lottery, betting and skill gaming market, similar legal norms exist for Gespa. According to Article 107(1) of the Gaming Act, Gespa takes actions against illegal gambling and co-operates with domestic and foreign supervisory authorities. It can take the same enforcement actions of an administrative law nature as the ESBK (warning letter, blacklisting, domain blocking). While Gespa can conduct administrative proceedings independently (eg, in relation to compliance with AML rules and the security concept and social concept), it cannot do so in the field of criminal proceedings; it can only inform and support the law enforcement authorities.

## **11.2 Sanctions**

The new criminal law sanctions have been available by law since 1 January 2019, and the new administrative law sanctions since 1 July 2019. While these sanctions are readily available to the authorities, their use or the effects of their use have been limited.

Blacklisting and domain blocking measures could have been applied since 1 July 2019 but initially experienced delays in practice. The first blacklists by the ESBK and Gespa were published on 3 September 2019 and included a rather limited number of websites. The effectiveness of the domain blocking measures has been limited as some of the listed websites could still be accessed. Furthermore, a domestic ISP (unsuccessfully) appealed a regulator's decision regarding the original blacklist. In any event, most of the large international gambling operators, which are often listed on a stock exchange,

withdrew from the Swiss market before the Swiss regulators started their enforcement.

As per criminal law sanctions, the regulatory authorities have thus far shown little appetite to use enforcement means of criminal law against unlicensed online operators. This is not very surprising since the applicability of Swiss criminal law in relation to acts taking place abroad (that is, remotely offering games through the internet) and the enforceability of criminal sanctions in relation to such acts abroad is questionable.

## **11.3 Financial Penalties**

Financial penalties can be enforced rather easily within the territorial boundaries of Switzerland. In other words, financial penalties against licensed or unlicensed operators based in Switzerland are enforceable. By contrast, if the Swiss authorities were to hand down financial penalties against unlicensed operators based abroad, their enforceability would be uncertain, as there are both legal and practical difficulties that make enforcement questionable.

# **12. RECENT TRENDS**

## **12.1 Social Gaming**

Some online social games have experienced major success. In Switzerland, such games are not addressed directly by regulation. Under certain conditions, they can fall under the category of large-scale games. According to Article 3(e) of the Gaming Act, large-scale games include lotteries, sports betting and games of skill that are carried out automatically, inter-cantonally or online. If the social game at hand included game features that involve both consideration and prizes, it would require a licence from Gespa. Free gaming features, by contrast, do not require a licence.

## 12.2 Esports

Esports have grown tremendously around the world. The question of whether esports are sports is the subject of much discussion, including in Switzerland, where the regulatory authorities have not taken a final stance on the issue of esports. Gespa published a statement online in which it noted that neither a general definition of esports nor an overall qualification under the Gaming Act could be provided. The authority argued that esports may have characteristics of gaming and gambling, as well as sports. On some occasions, it may be clearly localised in an arena; in other instances, the event may also take place online or in mixed forms.

The Federal Office of Sport (BASPO) takes the view that esports do not currently qualify as an official sport, as they were simply not understood as sports in the social perception. In BASPO's view, esports were also in conflict with the Sports Promotion Act (*Sportförderungsgesetz*), Article 1 of which sets out the aim of sports promotion as being to increase sports and exercise activities.

## 12.3 Fantasy Sports

Fantasy sports are not addressed directly by the Gaming Act. According to Article 3(d) of the Gaming Act, skill games are games in which the outcome depends entirely or predominantly on the skill of the player. If the predominance of skill in a (daily) fantasy sports game can be shown, it should qualify as a large-scale game under Swiss law, or, more precisely, as an online skill game that requires a licence from Gespa.

## 12.4 Skill Gaming

The broad definition of skill gaming in Article 3(d) of the Gaming Act is further detailed in Article 2 of the Gaming Ordinance. A skill game meets the following conditions, in particular:

- skilful players can win more than other players over a larger number of game units;

- in blind play mode, the probability of winning is low;
- players have several options for influencing the course of the game; and
- playing successfully requires skills of a certain complexity.

It can be expected that skill gaming, certainly online, will continue its success. It can easily be observed that millennials are not craving pure games of chance but are looking for games of skill or games of a hybrid nature. The skill gaming sector is a highly attractive one in Switzerland since (online and land-based) licences are available by way of a liberal licensing regime and no gaming tax applies in this sector.

## 12.5 Blockchain

It is often argued that blockchain can revolutionise the gaming and gambling sector. Indeed, if properly applied, there is the potential for transparency and efficiency. Since transaction data is immutable, there is more reliability and transparency, and with faster and cheaper financial movements, the player experience can become smoother and gaming operations more efficient. Along with some other nations, Switzerland was quickly identified as a “crypto nation” and has been at the forefront of hosting blockchain and cryptocurrency initiatives. This also has to do with a crypto-friendly regulatory environment.

The Gaming Act and its ordinances do not exclude the use of blockchain technology or cryptocurrencies. At the end of the day, casinos and other licensed operators interested in using blockchain and cryptocurrencies would have to be able to convince the regulator that the strict legal requirements can be met with these means. These requirements relate, for instance, to the security concept (*Sicherheitskonzept*) and AML rules and player protection. According to Article 42(2)(b) of the Gaming Act, the casino must ensure that a control system is operated

that verifies and documents all transactions of stakes and winnings. And, of course, in relation to the verification of player age (minors) and AML-enhanced CDD obligations, it would have to be shown to the regulator that anonymity was not an issue.

## 12.6 Reform

The Gaming Act and its ordinances only entered into force on 1 January 2019. The cantons then started to implement the new federal regulation into their cantonal laws and accordingly revised their laws with the necessary amendments; for instance, regarding small-scale games and poker tournaments. According to the Gaming Act, these cantonal reforms had to be implemented by 1 January 2021, a timeline that was missed by numerous cantons.

As a consequence of the overhaul of the federal and cantonal gaming laws, so-called small poker tournaments can now be legally organised outside of casinos, too. The first such tournament took place on 25 September 2020 in Hochdorf (Canton of Lucerne). Ten years ago, organisers of poker tournaments had to abruptly close their poker clubs after a controversial judgment by the Federal Court (the nation's highest court) that overturned decisions taken by the Federal Administrative Court and the ESBK.

## 13. TAX

### 13.1 Tax Rate by Sector

According to Article 120(2)(a) of the Gaming Act, the progressive tax rate for land-based casino operations shall be set between 40% and 80% of the GGR (*Spielbankenabgabe*). The Gaming Ordinance regulates the tax rate in more detail. Pursuant to Article 114(1) of the Gaming Ordinance, the basic tax rate regarding GGR generated in terrestrial casinos is 40% and is applied on GGR up to CHF10 million. For every addition-

al CHF1 million, the marginal tax rate increases by 0.5%, up to the theoretical maximum rate of 80%.

According to Article 120(2)(b) of the Gaming Act, the progressive tax rate for online casino operations shall be set between 20% and 80% of the GGR. The law sets forth that the tax rate can be reduced to half the amount during the first four years of operation. Pursuant to Article 115(1) of the Gaming Ordinance, the basic tax rate of 20% is applied on GGR up to CHF3 million. From this value, the marginal tax rate increases by the following steps up to the theoretical maximum tax rate of 80%:

- 2% for each additional CHF1 million of GGR between CHF3 million and CHF10 million;
- 1% for each additional CHF1 million of GGR between CHF10 million and CHF20 million;
- 0.5% for each additional CHF1 million of GGR between CHF20 million and CHF40 million;
- 0.5% for each additional CHF4 million of GGR between CHF40 million and CHF80 million; and
- 0.5% for each additional CHF10 million of GGR from CHF80 million.

It should be noted that the financial compensation scheme of a Swiss land-based casino towards international business partner(s) is subject to approval by the ESBK.

There is no gaming tax with regard to skill gaming: the normal local tax rate applies. Accordingly, the tax competition between cantons and municipalities applies in this field, with some cantons and municipalities applying internationally competitive tax rates.

As regards the public lotteries, their net profit is earmarked and supposed to go, by law, to good causes such as sports and culture.

**PLANZER LAW AG** is a boutique law firm specialising in technology, gaming and entertainment matters. The team further holds strong expertise in general business law and (white-collar) criminal law. PLANZER LAW AG has advised the global industry leaders as well as innovative start-ups, with clients benefiting from highly specialised expertise, a truly international perspective on legal matters and an outstanding global network of practitioners, executives, regulators and scholars. PLANZER LAW AG notably provides strategic, regulatory and legal

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**Simon Planzer** is partner at the firm, admitted to practise in Swiss and EU/EEA courts, and has specialised in EU/EEA and Swiss gaming law for approximately 15 years. Through his legal practice, publications, teaching and work with the media, he has substantially contributed to the cause of empirical-based and sound gaming regulation. Dr Planzer wrote his PhD on gaming regulation ("Empirical Views on European Gambling Law and Addiction"). He has published extensively on gaming

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