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Gaming Law 2021

Poland: Law & Practice

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Law and Practice

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1. INTRODUCTION

1.1 Current Outlook

Polish authorities have traditionally focused on ensuring that gambling laws are not circumvented for fiscal reasons. Gambling is supervised by the Ministry of Finance and regional tax authorities, which enforce compliance by means of administrative measures, including by revocation of a licence and fines. Some breaches may trigger criminal liability for fiscal violation.

Investigations and controls are conducted regularly to ensure effective tax collection. Dedicated teams supervise online gambling activities and manage a public registry specifying “blacklisted” domains, which ISPs are obligated to block.

Future developments may revolve around mechanisms preventing “domain cloning”, whereby an unlicensed gambling operator temporarily penetrates the Polish market under a different domain to that which was previously blocked. Other measures may relate to blockchain-based, fully decentralised gambling operations or gambling with crypto tokens and other virtual currencies, due enforcement challenges and other traditional issues affecting the regulation of those technologies.

Online casinos and lotteries may be investigated due to potential competition with a national lottery’s monopoly. Additionally, consumer protection laws are enforced by the Polish consumer protection authority, which has recently become very active in online markets (eg, by investigating marketplaces, influencers and fintechs).

1.2 Recent Changes

See **1.1 Current Outlook**. There have been no changes due to COVID-19.

2. JURISDICTIONAL OVERVIEW

2.1 Online

The Polish Act on Gambling (the “Gambling Act”) distinguishes four types of gambling games:

- games of chance, including number games, cash lotteries, prize lotteries, promotional lotteries, bingo (telebingo, cash bingo, prize bingo), dice games and cylindrical games;
- betting;
- card games; and
- slot-machine games.

The Gambling Act establishes the state’s monopoly with regard to online gambling, with the exception of promotional lotteries and betting. In consequence, only these two types of online gambling games are generally allowed in Poland and other games can only be organised by the state. In principle, skill-based online games – eg, traditional massively multiplayer online games (MMOs) and many social games – will fall outside the scope of the Gambling Act, while chance-based online games may be considered an illegal form of gambling. Mixed games should be assessed on a case-by-case basis.

In the event of doubt as to whether a particular game is covered by the Gambling Act and is prohibited/restricted, its operator may initiate a formal inquiry procedure with the Ministry of Finance.

2.2 Land-Based

The organisation of number games, cash lotteries, telebingo and slot-machine games outside casinos is covered by the state monopoly.

Other gambling games may be organised based on a licence or permit, depending on the type of game:

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- cylindrical games, card games, dice games and slot-machine games may be organised only in casinos; running a casino is permitted only based on a licence;
- betting may be organised either online or at betting shops, based on a permit;
- promotional lotteries, prize lotteries and prize bingo may be organised, based on a permit;
- in certain cases indicated in the Gambling Act, prize lotteries may be organised based on a registration, if the organiser is a public benefit organisation; and
- poker games may be organised in casinos; if the poker game meets certain requirements indicated in the Gambling Act, it may also be organised outside a casino.

3. LEGISLATIVE FRAMEWORK

3.1 Key Legislation

Gambling games are regulated in the Act of 19 November 2009 on Gambling and a number of executive regulations.

3.2 Definition of Gambling

Gambling has not been defined in the Gambling Act, as such. The Gambling Act, however, indicates four categories of games that constitute gambling:

- games of chance;
- betting;
- card games; and
- slot-machine games.

The “games of chance” category is broad and encompasses most of the current online gambling activities.

3.3 Definition of Land-Based Gambling

The Gambling Act does not provide for a definition of land-based gambling. The Act focuses on

indicating the features of each specific gambling game falling within its scope and most of those are applicable both to land-based and online gambling.

3.4 Definition of Online Gambling

The Gambling Act does not provide for a definition of online gambling. The Act focuses on indicating the features of each specific gambling game falling within its scope and most of those are applicable both to land-based and online gambling.

3.5 Key Offences

The key offences with regard to gambling are:

- the organisation of a gambling game covered by the state’s monopoly;
- unlicensed gambling operation;
- a breach of licence/permit conditions; and
- a violation of advertisement restrictions.

3.6 Penalties for Unlawful Gambling

Unlawful gambling may lead to:

- an administrative fine;
- the blocking of the website used for gambling;
- revocation of the licence; and
- criminal liability for the infringement of penal fiscal regulations, including fines and, in certain cases, imprisonment for up to three years.

3.7 Pending Legislation

There is no pending legislation.

4. LICENSING AND REGULATORY FRAMEWORK

4.1 Regulatory Authority

The regulatory authorities supervising the organisation of gambling games are:

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- the Ministry of Finance;
- the President of the Tax Administration Office;
- the Customs Office; and
- the Office of Competition and Consumer Protection (mostly in relation to consumer protection laws).

4.2 Regulatory Approach

The Polish regulatory authorities seem to follow a risk-based approach to regulation, focused on:

- the protection of society, especially minors, from the detrimental impact of gambling; and
- inhibiting the methods of circumvention of the Gambling Act for fiscal reasons.

4.3 Types of Licences

Depending on the type of gambling game, the Gambling Act requires a licence or permit in order to organise the game lawfully.

4.4 Availability of Licences

Some of the licences and permits are subject to quantitative restrictions (casinos and cash bingo halls).

If more than one entity, which meets the conditions specified in the Gambling Act, applies for the licence or permit, the Ministry of Finance is obliged to organise a tender in order to choose the entity that will be authorised to organise the game.

4.5 Duration of Licences

The duration of the licence is dependent on the type of gambling game.

A licence to run a casino or a bingo hall and organise betting is granted for a period of six years.

A permit to organise a prize lottery, promotion lottery, audiototele lottery and bingo is granted

for the duration of the lottery or game, but for a period of no longer than two years.

4.6 Application Requirements

The application requirements will differ depending on the gambling game organised. The key requirements involve the following:

- the submission of documents confirming the legitimacy of the source of capital used for operation;
- lack of arrears in the payment of taxes constituting the income of the state budget, customs duties, social security and health insurance contributions, or, in the case of a foreign entity, equivalents of the above, which are due in the state of the entity's registered office, issued by competent authorities of the state of the registered office;
- a bank guarantee of prize payment;
- a confirmation of compliance with AML regulations;
- a positive opinion of the local authorities as to the location of the premises on which the gambling games will be organised (for land-based games); and
- some types of gambling activities will require the adoption of an internal policy for responsible gambling.

4.7 Application Timing

The timescale of licence and permit applications differs depending on the type of gambling game.

The Ministry of Finance decides on the acceptance or denial of the organiser's application for a licence or permit within six months from the submission of the application.

In the case of a promotional lottery, audiototele lottery and prize lottery, the application is processed within two months from its submission.

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4.8 Application Fees

The licence or permit application is subject to an administrative fee, which differs depending on the type of gambling game subject to the licence or permit.

For each gambling game, the fee is dependent on the base amount, which equals the amount of the average monthly salary in the enterprise sector without payments of rewards from profit, in the second quarter of the previous year, announced by the President of the Central Statistical Office in Poland (eg, for the second quarter of 2020, the base amount was PLN5,370,64).

The examples of licence or permit fees are:

- 32,000% of the base amount in the case of casinos;
- 2,000% of the base amount in the case of betting, plus additional fees for each betting shop or website; and
- 10% of the prize pool in the case of a promotional and audiotote lottery, but no less than 50% of the base amount.

4.9 Ongoing Annual Fees

The organiser is obliged to pay a fee for the licence or permit renewal after its expiry. Also, an amendment of the licence or permit is subject to an administrative fee. Taxes will apply (see **13.1 Tax Rate by Sector** for further reference).

5. LAND-BASED GAMBLING

5.1 Premises Licensing

Some gambling games may only be organised in premises meeting the requirements set out in the Gambling Act.

For instance:

- the number of casinos in towns with up to 250,000 inhabitants may not exceed one;
- the number of slot machines in the administrative unit (*powiat*) may not exceed one per each 1,000 inhabitants;
- gambling facilities must conduct the registration of guests, which is a prerequisite for visitors to enter the facility;
- casinos and slot-machine facilities are obliged to have an audio-visual game control system installed;
- slot-machine facilities are obliged to have a communication system recording and archiving data such as stakes paid and paid-out prizes, the course of the game, location and correctness of functioning of the machines, including information on failures and interference with the machines; and
- gambling facilities must be equipped with back-up power sources independent from the public grid, as well as anti-interference installations ensuring continuous and undisturbed operation of games.

5.2 Recent or Forthcoming Changes

No substantial changes have been implemented recently and there are no forthcoming changes.

6. ONLINE GAMBLING

6.1 B2C Licences

The law does not distinguish between B2C and B2B gambling licences and is based on the underlying assumption that all gambling providers are consumer-facing and need to comply with the licence requirements indicated in **4.6 Application Requirements**.

Some requirements may affect suppliers of services to gambling operators (outsourcing), most notably:

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- servers must be located in the EU or EEC;
- the software used by online gambling operators must enable the Polish authorities to obtain online/offline (as requested) access to the operator's data related to gambling operation, including data affecting the course of the game and transactions made;
- only certified financial intermediaries may be used to process payments; and
- manufacturers of slot machines need to notify their business to the authorities and slot machines need to be able to record the history of transactions for the purpose of tax calculation.

6.2 B2B Licences (Suppliers, Software, Etc)

See **6.1 B2C Licences**.

6.3 Affiliates

In general, gambling operators cannot outsource their gambling operations to affiliates, with the exception that operators of betting, number games or monetary lotteries may employ agents to:

- sell lottery tickets or betting coupons;
- accept bets; or
- pay out prizes.

Agents cannot outsource their operations (prohibition of sub-agency agreements). Use of an agent is only allowed if they meet certain statutory criteria, such as not being a tax debtor; not posing a risk to national security, public safety or the economic security of the country; having an untarnished reputation; and not having been charged with deliberate crime/fiscal crime.

6.4 White Labels

White-label providers are subject to the same regulations as gambling operators (there are no distinct regulations). Note that ownership changes will trigger compliance regulations; see **10**.

Acquisitions and Changes of Control for further reference.

6.5 Recent or Forthcoming Changes

No substantial changes have been implemented recently and there are no forthcoming changes.

6.6 Technical Measures

ISPs are obligated to block websites of unlicensed operators indicated in the registry managed by the Ministry of Finance. Additionally, payment processors are prohibited from providing their services to such websites.

Online gambling operators can only use websites with top-level domains under the Polish domain (.pl) and that are indicated in the licence.

Gambling operators have to back up (for five years) all data processed in the operation of games and allow public authorities access to such data for the purpose of verifying a game's process.

Only certified payment institutions may provide payment processing services for gambling operations.

7. RESPONSIBLE GAMBLING (RG)

7.1 RG Requirements

The key requirements include:

- casino location is restricted based on the population and proximity to special facilities, such as schools, kindergartens, churches and other gambling facilities;
- advertisement is either outright prohibited or restricted, depending on the type of operation (see **9. Advertising** for further reference);
- betting advertisements must be accompanied with information about illegal gambling

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consequences, gambling risks and details of the licence to operate; and

- slot-machine operators and online gambling operators must adopt terms and conditions (T&C) on responsible gambling (aside from the standard T&C regulating the rules of each game), specifying, among others, an age verification mechanism (users under 18 are not allowed) and a procedure for the registration of users. The terms are subject to the Ministry of Finance's approval.

7.2 Gambling Management Tools

See 7.1 RG Requirements.

8. ANTI-MONEY LAUNDERING (AML)

8.1 AML Legislation

Gambling operators are subject to standard AML requirements as specified in Directive (EU) 2015/849, which has been implemented in Poland by the Act on combating money laundering and financing of terrorism dated 1 March 2018 (with amendments).

8.2 AML Requirements

The key AML requirements include:

- an obligatory KYC procedure;
- analysis of transactions made by the customer;
- analysis of the source of money used for gambling (in justified situations); and
- updating all customer documentation.

9. ADVERTISING

9.1 Regulatory/Supervisory Agency

See 4.1 Regulatory Authority regarding the general supervisory authority in gambling.

The regulatory authority that supervises the compliance of the advertising of gambling games with Polish law is the National Broadcasting Council.

9.2 Definition of Advertising

Polish law restricts (with some exceptions) advertising and promoting cylindrical games, card and dice games, slot-machine games and betting.

Advertising is defined as the public dissemination of trade marks, graphic symbols and other signs related to such games, including names and graphic symbols of their operators and information about the place where they are organised. This includes products or services that rely on a name, trade mark, graphic shape or packaging similar to such game or its operator.

Promoting is defined as the public presentation of such games; the distribution of gadgets related to them, casino chips or other evidence of participation in such games (eg, betting coupons) or their sale in public places; and other forms of public encouragement to participate in such games, or promoting their benefits or encouraging people to enter casinos or betting facilities. This includes products or services that rely on a name, trade mark, graphic shape or packaging similar to such game or its operator.

9.3 Key Legal, Regulatory and Licensing Provisions

In general, advertisement/promotion does not require licensing. See 9.4 Restrictions on Advertising.

9.4 Restrictions on Advertising

Advertising and promoting cylindrical games, card and dice games, and slot-machine games is prohibited. Advertisement of betting is allowed

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subject to statutory requirements, of which the most notable are:

- only licensed betting operators are authorised to advertise;
- advertisements cannot be directed at minors (under the age of 18);
- an advertisement cannot invoke links between gambling and physical or intellectual fitness, relaxation, sexual attractiveness, or professional or personal success;
- an advertisement on TV and radio is prohibited between 6am and 10pm, with the exception of advertisements during a sports event sponsored by the sponsor of the event, or a team/players actively participating in the event; and
- in public places, with exception of a betting company's website indicated in the licence and betting facilities.

Note that it remains controversial as to whether internet advertisement is advertisement in a "public place" or not, and it is recommended that any online advertisement be reviewed based on the applicable regulation.

Sponsorship is regulated separately from advertisement and is currently the main area for marketing campaigns run by betting operators.

9.5 Sanctions/Penalties

The violation of an advertisement restriction constitutes a fiscal crime, which may trigger a fine. A fine can be imposed on individuals engaged in the process of advertising (commissioning, organising, running advertisements, etc).

10. ACQUISITIONS AND CHANGES OF CONTROL

10.1 Disclosure Requirements

A change in the capital structure of a gambling company – causing in excess of 10%, 20%, 30%, 40%, 50%, 60%, 70%, 80% or 90% of the total share of votes or share in the company's equity – needs to be notified to the Ministry of Finance.

The notification should include the names of shareholders and the value of their shares, the sources of financing, and a copy of the articles of association.

10.2 Change of Corporate Control Triggers

The following changes require notification to the appropriate authorities:

- changes in the capital structure – see **10.1 Disclosure Requirements**;
- a change in the management board, supervisory board or audit committee;
- a change of the local representative of EU-based companies; and
- other changes relating to the company that require changes to the National Court Registry (eg, change of name).

10.3 Passive Investors Requirements

Notification will be required if the capital levels specified in **10.1 Disclosure Requirements** are exceeded.

11. ENFORCEMENT

11.1 Powers

The authorities can issue administrative decisions; most notably, requesting a cure of legal deficiencies, revoking a licence or imposing a monetary fine of up to PLN500,000. The block-

ing of an unlicensed website is possible (see **6.6 Technical Measures**). In some cases, criminal liability may be triggered (eg, illegal advertising or unlicensed gambling operation).

11.2 Sanctions

The sanctions are enforced either by the court enforcement officer, supervised by a competent court, or – in the case of criminal liability – by competent prosecuting authorities.

In general, the authorities remain focused on enforcing fiscal-related regulations. Most cases and investigations relate to illegal operations of slot-machine facilities, and unlicensed gambling websites targeting Polish customers and avoiding taxes (in 2018, the share of illegal gambling websites on the Polish market was estimated at 50.8%).

11.3 Financial Penalties

Financial penalties are enforced through court enforcement officers, supervised by a competent court, unless paid voluntarily. A final administrative decision or a court order may be the basis for enforcement.

12. RECENT TRENDS

12.1 Social Gaming

There are no specific trends. Social gaming may fall within the scope of the gambling regulation and thus require licensing.

12.2 Esports

There are no specific trends. Betting on esports falls within the scope of the gambling regulation and requires licensing.

12.3 Fantasy Sports

There are no specific trends. Fantasy sports may fall within the scope of the gambling regulation and thus require licensing.

12.4 Skill Gaming

There are no specific trends. Skill gaming is outside the gambling regulation and the focus should be on ensuring compliance with consumer protection regulations.

12.5 Blockchain

There are no specific trends. Currently, gambling regulations are technology-neutral, meaning that both blockchain-based and centralised gambling operations will fall within the scope of gambling laws. The enforcement of many obligations against fully decentralised networks may be difficult or even impossible for practical reasons; however, the authorities may then decide to focus on the users themselves (participation in illegal gambling is subject to a fine).

12.6 Reform

No substantial changes have been implemented recently and there are no forthcoming changes.

13. TAX

13.1 Tax Rate by Sector

The organisation of gambling games is connected with the obligation to pay gambling tax.

The tax rate is dependent on the type of gambling game and totals between 10% (for prize lotteries and prize bingo) and 50% (for slot-machine games, cylindrical games, dice games and card games, except for poker tournaments).

Revenues gained from the organisation of gambling games are also subject to other regular taxes, such as income tax.

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