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The International Comparative Legal Guide to:

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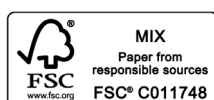
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Luxembourg

Bonn Steichen & Partners

Michaël Kitai



1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in Luxembourg?

Sports betting, casino games and lotteries: the law dated 20 April 1977 on the operation of a business providing ‘games of chance’ (*the 1977 Law*) empowers the Ministry of Justice to authorise such games. It is the sole authority in charge of delivering the required authorisation to private operators willing to offer such types of games.

Small Lotteries: when the value of the tickets to be issued is equal to or less than EUR 12,500, the authorisation should be granted by the Board of Mayor and Aldermen (*Collège des Bourgmestre et Echevins*) of the municipality’s principal place of ticketing.

National Lotteries: this type of game is exclusively organised by the *Oeuvre Nationale de Secours Grande-duchesse Charlotte* (the *Oeuvre*), a non-profit public institution under the supervision of the Prime Minister and State Minister. Net proceeds resulting from the activities of the so-called *Loterie Nationale* are distributed to charitable institutions.

Casinos: there is only one authorised and regulated casino in Luxembourg, i.e. Casino ‘2000’. Montdorf is the sole holder of authorisation given by virtue of Article 5 of the 1977 Law. Further authorisations, if any, would be granted by decision of Government Council after due investigation and in accordance with specifications put in place by the Ministry of Finance and after the advice of the Council of State.

1.2 Specify all legislation which impacts upon any gambling activity (including skill and social games), and specify in broad terms whether it permits or prohibits gambling.

The law dated 20 April 1977 on the operation of a business of ‘games of chance’ is the main law regulating gambling activity in Luxembourg. Article 1 of 1977 Law is clear as daylight as to the legal status of gambling: “*the operation of a business of ‘games of chance’ is prohibited*”. Such principle of prohibition is based on the fact that the desire to gamble is understood in Luxembourg as creating a danger of irrational and destructive behaviour (Trib. Arr. Lux., 26 July 2000, *Nationale Postcode Loterij*, n°10605). Therefore, the exceptions to such prohibition (i.e., the granting of authorisation to suppliers who fulfil the conditions set forth by the laws) are limited in order to channel such desire to gamble.

The Law dated 22 May 2009 related to the *Oeuvre* and the *Loterie Nationale* (*the 2009 Law*) entitles solely the ‘*Loterie Nationale*’ to operate its commercial channel of distribution of any forms of lotteries and sports betting products, including online.

The Grand-Ducal regulation of 7 September 1987 on sports betting defines the legal framework of such games and conditions to be met to be provided with an authorisation from the Ministry of Justice.

The Grand-Ducal regulation dated 12 February 1979 (as amended from time to time) constitutes the legal framework of casinos and similar establishments; it defines the conditions related to the authorisation as well as the nature and listing of authorised games.

The Law of 30 July 2002 regulating certain trade practices and penalising unfair competition provides a list of conditions to be met by an adviser-organiser of online and land-based lotteries, mere competition games and free advertising raffles which are exclusively organised for marketing purposes.

The Law dated 21 December 2007 introduces a 80 per cent tax exemption on income derived from IP as well as on capital gains realised on the disposal of such IP (attractive for brands having integrated social games into their marketing strategies).

2 Application for a Licence and Licence Restrictions

2.1 Who can apply for a licence to supply gambling facilities?

Any individual or entity may apply regardless of his nationality or its jurisdiction. In the event the applicant resides abroad, he/it should appoint a general agent domiciled in Luxembourg who shall be entitled to validly represent the operator in general and before Luxembourg courts in particular. Furthermore, the general agent shall be jointly liable for paying taxes and levies.

2.2 Who or what entity must apply for a licence and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Any individual or entity supplying gambling services to Luxembourg residents should apply for a licence. However, persons organising mere competition games, free lotteries and raffles exclusively organised for marketing purpose do not need a licence.

To some extent, Luxembourg adopts a policy of fair tolerance towards EU operators performing cross-border gambling services notably in Luxembourg.

Employees working in a company operating sport betting and casino games are also required to obtain a prior approval from the Ministry of Justice.

2.3 What restrictions are placed upon any licensee?

There is a distinction between (i) regulated licensees (*Loterie Nationale* exclusively providing lotteries and sports betting and *Casino '2000'* exclusively organising casino games) pursuant to laws and regulations, and (ii) authorised private licensees for which scope of activities and numbers of suppliers are strictly restricted to what Luxembourg State considers as the 'existing need' which rejects the pure lure of money as the sole basis for application. A licensee willing to organise lotteries is, e.g., required to organise such lotteries for – full or partial – purposes of general interest or public utility related to philanthropic, religious, scientific, artistic, educational, social, sport or tourism. However, mere competition games, free lotteries and raffles exclusively organised for marketing purposes are deemed lawful and, as such, do not require a licence.

2.4 What is the process of applying for a gambling licence?

The applicant should send his application to the Ministry of Justice. Although not expressly defined in the 1977 Law, the application should *inter alia* include: (i) the nature and description of intended gambling activities to be exercised in Luxembourg; (ii) the integrity of the gambling operator; (iii) shareholder information of the operating company; (iv) a description of the allocated parts of hazard/skill in the game; and (v) an explanation of the utility of the proposed gambling supply (which may not jeopardise the balance supplies/demands currently existing in the Luxembourg gambling industry).

2.5 Please give a summary of applicable time limits and revocation.

Licences to private operators have a limited duration which is fixed pursuant to the terms of the decision granted by the Government Council. Such decision also determines the nature of authorised games, the operation, monitoring and control measures of agents, conditions related to access into the gambling premises (if any), the opening and closing hours as well as the tax levy. Licences granted can be revoked if any of the above terms is not respected by the licensee.

2.6 By product, what are the key limits on providing services to customers?

Key limits on providing services to customers include:

- minimum age for entrance fixed at 18 years old (applicable for every gambling product);
- limitation and prohibition on employees of casinos to have: (i) part or interest in gambling products; (ii) for any reason whatsoever to have any discount on the gambling proceeds; and (iii) to participate in the game, either directly or through an intermediary;
- gambling providers and their employees shall not be entitled to grant credit or lend money for gambling or to pay gambling debts; and
- casino services cannot be provided in one single room: the casino is required to reserve a special room, separate and distinct, for the installation of slot machines.

2.7 What are the tax and other compulsory levies?

The tax regime applicable to gambling is the same whether operated online or land-based.

The tax base applies to gambling proceeds as detailed in each following games.

Casino games

Gaming proceeds comprise:

- as to 'banking games' (which are defined as 'games where one player, the banker, competes against each of the other players individually' and listed as follows: roulette; and trente et quarante, etc.): the difference between the initial stake (together with any complementary stakes from time to time) put by the casino and the proceeds realised at the end of the game, such difference being diminished by the following deductions (25 per cent for the expenses and 10 per cent for the loss in relation to the artistic events organised by the casino); and
- as to 'commerce games' (i.e., bridge, etc.) and 'circle games' (i.e., baccarat, écarté, etc.): the aggregate amount of charges or rakes withheld by the casino during the games.

'Sports betting' games and lotteries

The tax base is the gross amount committed in the betting.

As to the tax rate, Luxembourg laws also distinguish according to the category of games.

Casino games

Withholding tax on the gross amount is 10 per cent up to EUR 45,000; 20 per cent from EUR 45,000.01 to 90,000; 30 per cent from EUR 90,000.01 to 270,000; 40 per cent from EUR 270,000.01 to 540,000; 45 per cent from EUR 540,000.01 to 1,080,000; 50 per cent from EUR 1,080,000.01 to 2,700,000; 55 per cent from EUR 2,700,000.01 to 4,500,000; 65 per cent from EUR 4,500,000.01 to 6,300,000; 75 per cent from EUR 6,300,000.01 to 8,100,000; and 80 per cent above EUR 8,100,000.

Sports betting and lotteries

Tax rate: 15 per cent.

Tax exemptions

- Gambling proceeds are exempted from income tax, wealth tax and VAT.
- Special status of gambling products offered by the *Loterie Nationale*: since 100 per cent of the gains realised by the *Loterie Nationale* shall be redistributed to charitable organisations, there is no tax on lotteries and no tax on sports betting products offered by the *Loterie Nationale* either.

2.8 What are the broad social responsibility requirements?

The authorised and regulated gambling operators on the Luxembourg gambling market have voluntarily adopted and implemented appropriate measures with respect to social responsibility and for the prevention of gambling addiction so that public authorities have considered that no further action was justified. Furthermore, Article 9 (2) of the 2009 Law states that alongside the development of commercial methods to promote lotteries and sports betting, the *Loterie Nationale* shall organise information campaigns on the economic, social and psychological risks in relation to gambling and co-operate with the competent authorities and various associations specialised in the sector to an active and co-ordinated policy of prevention and assistance related to gambling addiction.

2.9 How do any AML financial services regulations or payment restrictions restrict or impact on entities supplying gambling?

Luxembourg is one of the first jurisdictions to have implemented anti-money laundering laws.

Following recommendations from the OECD's Financial Action Task Force (FATF), Luxembourg conducted a fundamental reform of its legislation in this area with three laws dated 27 October 2010 enhancing the anti-money laundering and counter terrorist financing legal framework and organising the controls of physical transport of cash entering, transiting through, or leaving the Grand Duchy of Luxembourg laws and a Grand Ducal regulation (29 October 2010). The FATF subsequently agreed that the Luxembourg legal regime conforms to its anti-money laundering rules and standards.

Such laws and regulations require to declare suspicious transactions to professionals outside the financial sector including to casinos and any gambling institutions within the meaning of the 1977 Law.

Being considered as specifically exposed to receiving monies originating from criminal activity, the law as amended from time to time specifies 2 specific requirements with respect to such gambling institutions:

- an obligation to identify any customers (and, where applicable, their beneficial owners) buying or selling gambling chips for an amount of EUR 2,000 or more (as opposed to general threshold of EUR 15,000 applicable to the other professionals); and
- in any case, an obligation to register and identify all customers (and, where applicable, their beneficial owners) of casino (when subject to supervision of Luxembourg public body) immediately on or before entry, regardless of the amount of gambling chips purchased.

Furthermore, in order to limit the number of operators that might be involved in criminal affairs, the competent ministry in Luxembourg also carries out detailed administrative investigations to ensure that the ethics and integrity of casino operator are impeccable.

However, Luxembourg has not implemented so far (and does not contemplate to do so) any blocking systems requiring internet service providers to block access to non-authorized gambling websites, nor has Luxembourg yet developed (again, there is no intention to in the coming years) any blocking system for financial transactions related to betting or gambling.

3 The Restrictions on Online Supply/Technology Support/Machines

3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Luxembourg's laws are not clear as to the regime applicable to online gaming.

It is worth noting that current laws (including the 1977 Law) do not distinguish between games offered 'online' or which are 'land-based'. Consequently, "given the lack of precision on the 1977 Law, the Ministry of Justice could authorise online gambling activities (...) provided that qualitative conditions are met by the gambling operator (...) within the limits of what is set by the current law including the 1977 Law" (taken from a Ministry of Justice joint statement with the author Michaël Kitai). As a result, the application should satisfy the same process as briefly developed under question 2.4 above, in line with the Ministry's practice with respect to land-based gambling. The Ministry should then check whether the introduction of the new game would jeopardise the balance of supply and demand currently existing in the market.

3.2 What other restrictions have an impact on online supplies?

Despite the above theoretical statement, the effective situation of online gambling shows that there are no online gambling companies which are operating in Luxembourg with the aforementioned licence, except the *Loterie Nationale* which is the sole organisation directly regulated by virtue of Article 9(1)2 of the 2009 Law. The *Loterie Nationale* is also entitled to operate its commercial channel of distribution of any forms of lotteries and sports betting products, including online. The *de facto* monopoly is a huge restriction upon online supplies.

3.3 What terminal/machine-based gaming is permitted and where?

Article 3 of the 1977 Law prohibits the organisation of slot and other machine-based gaming on the public highway and in public places and in particular in bars (outside casinos). The only terminal/machine-based gaming devices authorised are those provided by the Casino '2000' as listed and whose conditions are detailed pursuant to Articles 16 to 20 of the Grand-Ducal regulation dated 12 February 1979 (as modified by the Grand-Ducal regulation dated 8 March 2002) by execution of Article 6 of the 1977 Law: i.e., 'machines à rouleaux' and 'video games', devices which should be approved in advance by the Ministry of Finance. A system of electronic gaming card for slot machines was recently allowed by the Grand-Ducal regulation dated 22 January 2014.

4 Enforcement and Liability

4.1 Who is liable for breaches of the relevant gambling legislation?

According to Article 14 of the 1977 Law and Article 305 of the Luxembourg Criminal Code, the operators who illegally operate a business of 'games of chance' with a profit objective (the legislature aimed to punish the beneficiary of gambling's passion and not the player himself) are punished as follows: "*Persons who operate (either directly or by intermediary), in whatever place and whatever form, a business of 'games of chance' without legal authorisation either while taking part in it by themselves or through their employees, or by receiving people entitled to take part in a pecuniary payment or by operating a taking away on the stakes, or by getting directly or indirectly some other profit by means of these games, will be punished by imprisonment from eight days to six months and by a fine from EUR 251 to 25,000.*"

4.2 What is the approach of authorities to unregulated supplies?

Although unregulated supplies fall under the scope of the abovementioned article 14 of the 1977 Law, Luxembourg generally adopts a policy of fair tolerance towards EU operators performing cross-border gambling services notably in Luxembourg and implicitly tolerates – to some extent – such operator without applying for a licence.

4.3 Do other non-national laws impact upon enforcement?

European regulations and guidelines are generally followed by Luxembourg which intends to comply with the fundamental freedoms derived from the EC Treaty including freedom to provide authorised gambling services from one Member State to Luxembourg.

4.4 Are gambling debts enforceable in Luxembourg?

Gambling debts are not enforceable in Luxembourg which does not grant any action to gambling winners. However, losers that voluntarily paid a gambling debt cannot seek to recover such paid debt. Furthermore, Luxembourg has developed an extensive case-law based on the civil code provisions in connection with stock market debts.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?

Luxembourg is currently in discussions to implement (i) a legal framework in relation to online gambling, and (ii) the offering of a

consistent structure to regulate land-based poker and other games corresponding to an increasing need of its residents.

Luxembourg furthermore constantly improves its legal framework and attractiveness for ICT and ‘social gaming’ in order to be the distribution platform leader to access worldwide markets. Xavier Bettel, Prime Minister, recently stated during the 2014 European ICT Awards Gala Dinner in July 2014: *“I am very proud as Prime Minister to be also Minister of Media and Communications. It is not a surprise, it is because the ICT sector is a key element of our government’s policy.”* Luxembourg has recently created and keeps promoting tailor-made networks (supervised by Luxembourg administration agency) supporting the various “social games” actors in the field of information and communication technology and fostering business opportunities.

For all the above reasons and given the very business-friendly tax environment and appropriate corporate vehicles, the biggest ITC companies (e.g. Amazon, iTunes, eBay, PayPal, Vodafone, RealNetworks, Rakuten, Skype, etc.) and leading fast-growing online cloud and social gaming companies (Innova, OnLive Inc, Zynga, Big Fish Games, Kabam, Nexon, Bigpoint and Mgame) have elected the country as their European distribution platform.

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