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The International Comparative Legal Guide to:

## Gambling 2019

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A practical cross-border insight into gambling law

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# Nothing is Permanent Except Change: A Commentary on the State of Global Online Gambling Regulation

WH Partners



Dr. Joseph F. Borg



Dr. Samuel Gauci

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### Introduction

A jurisdiction's policy and the position it takes with reference to specific matters is affected by a number of elements. Such elements include: the ideology of the political party/ies in government; cultural differences and religious beliefs; court judgments; the financial situation of the jurisdiction; local business interests; and others. This is no different to online gambling.

We have seen many changes and developments in government policy in various countries, particularly when it comes to gambling policy. As a result, we have moved away from a time when governments were either not interested in regulating online gambling or considered online gaming to be evil and that it should be banned, to a situation where there have been substantial developments globally in the regulation of online gambling with numerous jurisdictions reviewing their policy and position on online gambling by taking initial steps towards regulating online gaming. The constant change we have therefore seen and consolidated over the past five years or so is that the majority of jurisdictions are now in favour of regulating online gambling and have taken the required steps to do so.

The fundamental principles on which gambling regulation is based are common to all, these being mainly to ensure: that gambling is fair and safe; that minors and vulnerable persons are protected; and that gambling is free from crime and money laundering. All legislators should legislate with these principles in mind, and do so in a manner which they deem most effective. This should, in principle, also bring about a convergence of legislation of various jurisdictions in the methods they adopt to ensure that these principles are addressed. Unfortunately, this has not consistently been the case, since very few legislators try to seek uniformity in the compliance obligations of operators, making it extremely difficult and costly for operators to comply with the various rules of the different jurisdictions. It must not be forgotten that this is a service that by its nature is cross-border, which is offered on the internet to persons of different nationalities and residing in numerous countries. Ultimately, however, the service itself remains the same and it is only the varying legislative requirements that makes the service different in certain details. Another unfortunate matter is that many jurisdictions impose certain conditions in order to collect more taxes or to protect incumbents or local businesses. This, in the end, affects the end user, resulting in less attractive products and less choice.

### Global Overview

Operators have always kept a keen eye on the position the US takes on the regulation of online gambling, and eagerly await the opening

of US states to legislation. Operators, as a general rule, have stayed away from offering their services in the US, due mainly to it being illegal to offer online sports-betting. We have seen the US moving from a position where online gambling is banned to a situation where a number of states have legislated in favour of online gambling and have licensed operators. A number of states who have regulated also share online liquidity, which is something that would not have been conceivable a few years ago. Online sports-betting, however, has remained prohibited, although we have seen major developments this year in this respect due to a fundamental court ruling which has opened the door to regulating online sports-betting.<sup>1</sup>

Moving to Europe, 2018 has been a very busy year for Sweden, where we have seen the approval of the Gambling Act, which establishes that, as from 1<sup>st</sup> January 2019, operators will require a licence to offer online gambling in Sweden. This legislation has been anticipated for a number of years and has seen interest from a large number of operators that are interested in either continuing to offer their services in Sweden or who would like to start offering their services in this jurisdiction.

We expect to see a transition of operations from the current set-up whereby operators largely operate in Sweden by means of a gaming licence issued by the Malta Gaming Authority, to a migration of such operations and players to the new licence to be issued by the Swedish Gambling Authority.

As for Malta, on 1<sup>st</sup> August 2018 the overhaul of the Maltese gaming legislation came into force, which saw the repeal of the previous legal framework for the introduction of the new Gaming Act and the regulations and directives issued thereunder. The new legislation has streamlined and simplified the licensing requirements and process, made it easier and more effective to offer new games, and established a framework that responds to the ever-changing technological evolution.

Malta, by introducing the new legislative framework, is building on the previous legislative framework and the experience it has garnered over the years of regulating the online gambling industry.

The above-mentioned countries are examples of the international trends which are developing in various jurisdictions around the globe. Jurisdictions such as the Netherlands continue to discuss a new legislative framework to regulate online gambling with the intention of issuing such legislation, but are, however, currently more focused on enforcing the current framework which surely requires amendment. Jurisdictions in South America are also discussing and reviewing if legislation should be enacted to regulate online gambling, while jurisdictions such as Spain and Italy have re-opened their licensing window, albeit for a limited period, for new operators to enter the market. Other jurisdictions persist in prohibiting online gambling.

However, from the examples mentioned above, we see that legislation is developing in a manner whereby online gambling is regulated in most jurisdictions by the enactment of frameworks which are applicable to the needs of the particular jurisdiction, that also attempt to make such frameworks attractive for operators to adopt.<sup>2</sup>

### Other Influences

The gambling industry has not only been affected by the introduction or amendment of gambling legislation in various jurisdictions; operators have also been required to apply and adopt changes to their operations due to other legislative requirements. In this respect it has been a very busy year for gambling operators operating in Europe, with the obligations to apply and comply with the amendments to anti-money laundering legislation via the 4<sup>th</sup> Anti-Money Laundering Directive, and amendments to data protection legislation in view of the General Data Protection Regulation (GDPR). Both areas are of utmost importance to the gambling industry and strict compliance is necessary to ensure that operators do not breach such requirements. The changes in both areas were significant; therefore attention and resources were required to amend operators' processes and procedures to ensure that they were compliant. The operators needed to enhance their capabilities and expertise in both areas.

In the AML sphere, gambling operators became obliged entities and, although most operators had already applied procedures and processes to combat money laundering, they had to ensure that the legislative requirements were adhered to and that the necessary checks were conducted to verify players' identities and that players' funds were derived from legitimate sources. Many regulators also introduced the requirement that a money-laundering reporting officer (MLRO) be appointed to oversee that operators continue to comply with these fundamental functions.

In the data protection area, operators had to ensure compliance with the GDPR and the rights it grants to players to have their data protected and processed as required. This process also led to amendments to the operators' policies and procedures and in many cases required that new provisions to the terms and conditions be applied and consent obtained from players to ensure that they received information which they requested.

Innovation also remained very high on operators' agendas, as this has always been an area where the industry has constantly excelled. The main areas where the industry has progressed were in evaluating the benefits that may be derived by using blockchain, cryptocurrencies and artificial intelligence. The gambling industry has been advocating for the introduction and/or further use of such technology and has been working with regulators to implement the benefits of these technological advancements.

Blockchain is a tool for operators to have their games and services operated on a decentralised system, which would be beneficial in many aspects. A blockchain would give further reassurance that games and transactions are transparent because everything would be recorded on the decentralised system without the possibility to untraceably delete any entry. This would guarantee complete trust in games, systems and transactions, ensuring that both the player and the operator are guaranteed that everything is recorded and that there is always a fair outcome.

This is also positive for gambling regulators because the use of blockchain would facilitate regulators' monitoring of operators' compliance, since the blockchain will record certain essential information. Submission of testing certificates, although very relevant and essential, are applicable until the day that they are issued and therefore the system may be modified thereafter, with

limited ways of verification without further testing and certification being submitted. The blockchain would eliminate such a risk, since such information and data is recorded on the blockchain and may be reviewed and confirmed at any moment.

Smart contracts are another aspect which could be adopted by online gambling operators and would largely benefit players, operators and regulators. Since smart contracts would be coded and stored on the blockchain, this again means they cannot be altered without being recorded and, therefore, where the smart contract regulates the relationship, what is coded would be applicable and implemented in all cases without exception. This could revolutionise games because they would be completely regulated by smart contracts without the need for third parties to be involved, and the result would always be according to the terms of the coded smart contract without any error and/or abuse.

Smart contracts also have the potential to change the way users deposit and withdraw money by creating a situation where there is no requirement for a third party to process payments, hence also eliminating related fees and making the payment instant from the player to the operator and *vice versa*. Payments may, however, still be a stumbling block due to the requirement to use cryptocurrencies which is still an area that finds the most resistance. It might be most beneficial, at this stage, to primarily promote the use of blockchain and the vast benefits that it creates and allows without the necessity to use cryptocurrencies.

An online gambling operator's main goal is to make the player's experience more enjoyable and the use of blockchain technology surely has the potential to achieve this, since the player experience would benefit greatly in terms of transparency, fairness, and efficiency.

Unfortunately, regulators tend not to keep up with the innovative pace of the industry; therefore such innovation cannot be adopted in a timely manner as is required by the industry, although development has been seen. At the beginning of October 2018, the Malta Gaming Authority issued a document stating it will accept applications as from 1<sup>st</sup> January 2019 for licensed operators to use certain benefits and aspects of blockchain and cryptocurrencies for a sand-box period of approximately 10 months, in order to better understand its applicability and benefits, with the intention to regulate such use after the sand-box period ends. It will be interesting to see how this develops and how other jurisdictions will react to the applicability of this new reality.

We are also experiencing an interesting convergence between gaming and gambling, particularly with social games, fantasy sports and elements around the esports industry. In particular, we have also seen the growth of loot-boxes, which have become more attractive and relevant especially due to the constant exponential growth of esports. This is a phenomenon which needs to be understood well and clarity needs to be established globally on whether there is a requirement to regulate the offering of loot-boxes or not. It is important that all stakeholders participate in such an analysis to ensure the best outcome. It is taken for granted that reputable operators offering loot-boxes want to ensure that there are safeguards in place so that children either do not have access to the purchase of loot-boxes or, as a minimum, they are limited on the amount they can spend. This would also ensure that adults who grant minors access to their payment facilities are more in favour of their children accessing loot-boxes to enhance their gaming experience. Through dialogue between operators, regulators and possibly game developers, the right approach to addressing loot-boxes should be sought. There has been a first step in this direction by means of the signing of an agreement between 16 gambling regulators from Europe and the United States to attempt to address the loot-box issue. These regulators are encouraging stakeholders to engage in a dialogue.

## Conclusion

The online gambling industry never sits back and operates without changes and new challenges to address. It is an industry which faces an always changing and evolving legislative environment, which it constantly needs to monitor to ensure it complies with such legislative requirements at all times. However, it also pushes boundaries in the applicability of new technology to continue to keep its services appealing, innovative and relevant. Therefore, what is truly constant for the gambling industry is change.

## Endnotes

1. For further analysis, please see chapter 2: *U.S. States may now Legalise Sports Betting – But the Federal Wire Act Affects State Implementation*, by Mark Hichar of Greenberg Traurig, LLP.
2. For further detail on gambling laws and regulations by jurisdiction, please see the respective country-focused chapters to this guide.



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