

Switzerland - on its way to become an online gambling hotspot?

Currently, Switzerland's regulatory regime in the gaming sector restricted the organisation or operation of online games of luck for money. The fierce regulation resulted in substantial gambling revenues leaving the country. In order to regain the associated tax incomes and become an attractive domicile for online gambling operators, Switzerland now intends to implement a commercially viable legal regime.

Held to be dangerous to public morality, the Swiss Constitution banned games of luck for money for more than a century. It was only in 2000 that the prohibition was lifted and Switzerland's casino industry began to flourish. But the golden age seems to have vanished quickly as the industry suffers a decline in revenues of 25% since 2007.

One reason for the decrease is, among others, Switzerland's fierce regulatory regime in the gaming sector which prohibits the organisation or operation

of online games of luck for money. As Swiss players may access online gaming services provided from abroad, the success of online gambling services in Switzerland goes hand in hand with substantial gambling revenues leaving the country. In order to regain the associated tax incomes and become an attractive domicile for online gambling providers and companies providing services to online gaming operators, Switzerland intends to implement a commercially viable legal regime.

Overview on Swiss Law on Gambling

The Swiss Constitution distinguishes between two kinds of gaming, i.e. casino games (games of luck such as roulette, black jack, etc.) and bets / lotteries.

Casinos (terrestrial and online) as well as cash games of luck	<p>Terrestrial operations: Subject to a license requirement</p> <p>Online operations: Illegal</p> <p>Legislation: Federal Gaming Act (FGA)</p> <p>Supervision: FGB (Federal Gaming Board)</p>
Any other games such as lotteries, bets and bingo	<p>Terrestrial operations: Subject to a license requirement</p> <p>Online operations: Principally illegal, but cantons may grant licenses (however de facto monopoly situation)</p> <p>Legislation: Swiss Lottery Act (SLA)</p> <p>Supervision: Comlot (Intercantonal Lottery and Betting Board)</p>
Skill games and prize competitions	Regulated by cantonal law. Principally, skill games and such prize competitions may freely be organised subject to certain cantonal restrictions.

Scope of Switzerland's Online Gambling Ban

The Swiss online gambling prohibition relates to any organisational activities within Switzerland, which facilitate online cash games of luck for Swiss residents. Activities must be evaluated depending on the specific circumstances of the individual case. However, as a general rule, the following risk assessment applies:

- Operation of a gaming server in Switzerland
- Processing certain financial transactions in connection with online gambling
- Advertising or marketing for online games (also hypertext linking)
- Managing and / or financing online gambling
- Accessibility of a foreign online service in Switzerland
- Participation in an online gambling offer

Planned Liberalisation

The Swiss Federal Council announced in early 2013 to present a first draft of a new gaming law to liberalise the current online gambling ban in Switzerland. A revised Gaming Act shall allow online gambling based on a concession. Illegal offers shall be reduced more effectively through appropriate technical measures. The aim of the new framework is basically to subject online gambling providers to the same rules and requirements as providers of gambling services outside of the Internet. It is assumed that – just as for «normal» casinos – licenses will be assigned to the providers.

The FGB has indicated that it will propose a system under which only a few operators will be granted a license. In its report of 31 March 2009 («FGB Report 2009»), the FGB clarified that notwithstanding which system finally will be put in place, it would in any event require that all IT-infrastructure has to be located in Switzerland. So far, only very few details of the new system have been made public. But it seems likely that:

Only a small number of licences will be granted

Technical measures to block the access to unlicensed gambling sites shall apply

Operational and technical measures that apply to terrestrial casinos shall also apply to online gambling providers

Lottery and sports betting shall remain monopolized

It yet remains unclear to what limitations and conditions the licenses will finally be subjected. We hope, however, that the Swiss legislator will – apart from setting a new legal frame for online gambling operators – remove the existing legal uncertainty regarding the legality of services provided in Switzerland for such online gaming operators). A first draft of the new gambling law is expected in the second half of 2013.

MME Partners compact

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