

Gaming 2021

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Gaming 2021

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Paul Hastings LLP

Lexology Getting The Deal Through is delighted to publish the fourth edition of *Gaming*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Belgium, China, Macao and Portugal.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Behnam Dayanim of Paul Hastings LLP, for his continued assistance with this volume.



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Contents

Introduction	3	Nigeria	47
Behnam Dayanim Paul Hastings LLP		Yahaya Maikori and Osayamen Ojo Law Allianz	
Gambling activities and EU law	4	Norway	52
Philippe Vlaemminck and Mathilde Thibault Pharumlegal		Brede A Haglund and Alexander Mollan Brækhus Advokatfirma	
Australia	7	Poland	58
Jamie Nettleton, Joseph Abi-Hanna and Brodie Campbell Addisons		Piotr Dynowski and Michał Sałajczyk Bird & Bird Szepietowski i wspólnicy sp.k.	
Belgium	14	Portugal	65
Philippe Vlaemminck and Robbe Verbeke Pharumlegal		Pedro Cortés Rato, Ling, Lei & Cortés Advogados	
Brazil	20	Spain	72
Luiz Felipe Maia, Flavio Augusto Picchi and Maria Luiza Kurban Jobim Franco, Yoshiyasu & Maia Sociedade de Advogados		David López Velázquez Uría Menéndez	
China	28	United Kingdom	78
Mark Cheng Chen Gan Jincheng Tongda & Neal		Jessica Wilson Harris Hagan	
Japan	34	United States	88
Takashi Nakazaki Anderson Mōri & Tomotsune		Behnam Dayanim, Jeremy Gordon and Rachel Miller Paul Hastings LLP	
Macao	40		
Pedro Cortés Rato, Ling, Lei & Cortés Advogados			

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GENERAL LEGAL FRAMEWORK

Legal definition of 'gambling'

1 | What are the legal elements required for an activity to be regarded as gambling?

The Norwegian Lottery Act utilises the umbrella term 'lottery' to cover gambling activities (eg, casino games, betting, lotteries, slots, skill games and any other activities), either online or offline, that require consideration and may provide winnings as a result of a draw, guess, chance or any other procedure that is partly or wholly determined by a random event.

The classification of an activity being a 'lottery' under Norwegian law depends on the fulfilment of the following conditions:

- consideration;
- winnings; and
- total or partial chance.

Norwegian law interprets the term 'consideration' broadly, in that the provision of private emails, use of a telephone with payment beyond the normal rate or where the participation requires paid membership will be treated as consideration. Free games are not considered to be gambling under Norwegian law.

'Winnings' encompasses money, objects or other tangible assets with economic value. In principle, anything of value could be considered winnings within the meaning of the Lottery Act. It follows from practice that items of negligible value (eg, simple promotional items and symbols of participation, such as mugs, cups, diplomas, posters and t-shirts) fall outside the concept of winnings.

If the outcome of the activity is beyond the control of the individual, the activity will have a total or partial chance. This condition is always met where the winner is selected by draw or guess, such as in traditional lotteries.

If the activity consists of several parts, only one part needs to contain an element of randomness for the condition of total or partial chance to be fulfilled. This includes activities where the chance of winning depends on both skill and randomness. It does not matter if the random element is present before or after the part of the activity where participants compete in knowledge or skill. Pure skill gaming does not have the element of chance; therefore, it is not treated as gambling under Norwegian law.

Gaming schemes (eg, money games in conjunction with sporting events) are regulated by the Gaming Scheme Act.

Remote activity

2 | With respect to remote or other cross-border activity, where is the wager deemed to take place?

Under Norwegian gambling laws, the location of the operator is the main rule. As such, it is not illegal for foreign-based gambling operators to tacitly provide their services to Norwegian customers. However, Norwegian authorities may pierce the veil where a Norwegian-based gambling operator with a predominantly Norwegian customer base relocates its operations abroad to circumvent Norwegian law.

Similarly, foreign-based operators that have no connection to Norway may be held liable where they align and facilitate their business in such a way as to provide services to customers in Norway. Such alignment may be to:

- provide gaming services and customer support in the Norwegian language;
- have Norway-based spokespersons;
- market services in Norwegian media or on Norwegian-based websites;
- directly facilitate payments to and from customers in Norway; or
- allocate any surplus of the gambling operator to Norwegian organisations.

Under Norwegian tax law, the wager is deemed to have taken place at the location of the tax subject in question.

Age restrictions

3 | What is the minimum age for participating in lawful gambling?

The minimum age for participating in lawful gambling is 18.

Penalties

4 | What are the penalties for offering unlawful gambling?

Anyone who intentionally or negligently violates the provisions contained in the Lottery Act may be subject to a fine or imprisonment for up to one year.

Serious offences are punishable by a fine or imprisonment for up to three years. In deciding whether the violation is serious, emphasis is placed on whether the act:

- concerns a substantial amount;
- is directed at children; or
- for other reasons must be regarded as particularly harmful.

The provision of pyramid schemes or gambling that can be easily misused or difficult to control is always considered to be serious.

5 | Does the law penalise the gambler directly for participating in unlawful gambling?

No.

Social and non-profit gambling

6 | Are there exceptions for social gambling, or charitable or non-profit gambling?

Private poker games are permitted provided that:

- the game is held in a private home;
- there are fewer than 10 participants belonging to the same social circle;
- the participants are all over the age of 18;
- the entry fee does not exceed 1,000 Norwegian kroner per person; and
- the game is not of an organised or professional character.

Bazaars and lotteries that are not open to the public are permitted, provided that:

- the proceeds go to a specific purpose;
- the activity is concluded in one day;
- no lottery tickets are sold beforehand;
- no prize exceeds 1,000 Norwegian kroner;
- the price of each lottery ticket does not exceed 5 Norwegian kroner;
- the maximum value of a single prize does not exceed 8,000 Norwegian kroner;
- the maximum value of all prizes does not exceed 40,000 Norwegian kroner;
- all prizes are drawn at the same time and with the participants in attendance; and
- the organiser has not engaged the help of an intermediary against payment.

There are also exemptions for lotteries with a humanitarian or socially beneficial purpose where proceeds are allocated to that cause. Pre-drawn or post-drawn lotteries are exempt from the requirement of authorisation if the organisation conducting the lottery:

- has an annual turnover of less than 200,000 Norwegian kroner;
- has a humanitarian or socially beneficial purpose;
- has provided the Norwegian Gaming and Foundation Authority with 14 days' notice before the sale of lottery tickets; and
- has not utilised a commercial third party to organise the lottery.

Non-profit gambling is permitted under Norwegian law, although the Norwegian authorities have taken a broad view as to the content of winnings.

Regulatory authorities

7 | What entity regulates land-based and remote gambling, and what are the regulator's powers?

The Norwegian Gaming and Foundation Authority regulates and enforces gambling and gaming activities.

The authority is responsible for the supervision of Norsk Tipping and Norsk Rikstoto, in addition to the supervision and control of the gambling market, including illegal marketing, illegal gambling, pyramid schemes and match-fixing. It also provides and recalls lottery authorisations and accounting control and approves contractors in the bingo sector. Further, the authority is responsible for distributing value added tax (VAT) compensation to voluntary teams and organisations, including general schemes and VAT in the construction of sports facilities.

To supervise the gambling market, the Gaming and Foundation Authority has the power to conduct inspections and demand access to the books and accounts of gambling operators. It may issue rectification or cease-and-desist orders to operators that, in its view, conduct illegal gambling activities. It may also issue coercive fines for non-compliance.

The Authority also has the power to enact resolutions or individual decisions on financial institutions in Norway, ordering them to refuse electronic payment transactions to and from uniquely specified account numbers or specified entity names. These types of resolution apply to Norwegian financial institutions only.

Anti-money-laundering regulations

8 | Are gambling licensees considered financial institutions for purposes of anti-money-laundering and similar financial services regulatory requirements or are they otherwise subject to such requirements?

No, although they are subject to many of the same requirements under the Money Laundering Act (eg, know-your-customer measures, risk assessments and reporting obligations).

LAND-BASED GAMBLING

Types

9 | What types of land-based gambling are permitted in your jurisdiction, and is gambling regulated at a national or subnational level?

Gambling is regulated at a national level. As a general rule, the provision, marketing or distribution of any form of gambling activity that has not been authorised by the Norwegian Gaming and Foundation Authority under section 6, paragraph 1 of the Lottery Act or section 2 of the Gaming Scheme Act is prohibited. Authorisations are generally granted only where the prospective authorised party has a humanitarian or socially beneficial purpose and proceeds are allocated to that purpose.

In theory, any organisation may apply for authorisation; however, the authorisation to operate commercial gambling activities is rarely granted. State-owned companies Norsk Tipping (gaming) and Norsk Rikstoto (totalisator betting) hold the exclusive rights to provide gambling services in Norway as result of the Norwegian gambling monopoly.

Norwegian law prohibits land-based casinos, although licensed bingo halls are permitted provided that certain conditions are met. Norsk Tipping and Norsk Rikstoto also provide Multix gaming terminals and horse-racing betting halls, respectively.

Establishment licensing

10 | Please describe the licensing criteria and procedures to operate land-based gambling of each type or classification. Does your jurisdiction limit the number of available licences?

Norwegian-based organisations may apply for authorisation to provide gambling activities. However, commercial authorisation is not generally provided as state-owned Norsk Tipping and Norsk Rikstoto hold the exclusive rights to provide commercial gambling services in Norway under the Norwegian gambling monopoly.

Private organisations may apply for authorisation to provide private lotteries, poker and bingo activities under certain conditions.

Authorisation for lotteries may be granted to local, regional or nationwide organisations that have a humanitarian or socially beneficial purpose within the area in which the lottery is held. Such lotteries cannot use more than 15 per cent of their turnover on marketing, nor

can the value of the main prize exceed 2 million Norwegian kroner. The combined value of all prizes must amount to at least 25 per cent of the lottery's allowed turnover.

The Gaming and Foundation Authority may also grant three-year licences to operate an annual, land-based, for-profit and national poker championship, with up to five regional qualification tournaments.

Authorisation for poker tournaments is conditional on the value of the main prize not exceeding 2 million Norwegian kroner. The maximum number of participants is 5,000 and they must be over 18 years of age. The licence holder must receive a minimum of 5 per cent of the tournament's turnover. The licence holder may recuperate costs incurred in arranging the tournament, with a limitation of 10 per cent of the turnover.

The Gaming and Foundation Authority may grant a licence to operate a bingo hall, provided that:

- the annual turnover does not exceed 700,000 Norwegian kroner; and
- the authorised organisation receives a minimum of 15 per cent of the profits (of which 30 per cent is from electronic bingo and pre-drawn bingo games).

Bingo authorisations are valid for one year.

Authorisation for post-drawn and pre-drawn public lotteries can be granted provided that:

- the annual turnover does not exceed 1 billion Norwegian kroner; and
- the authorised organisation receives a minimum of 20 per cent of the turnover.

Lotteries drawn by a commercial organisation may acquire authorisation where:

- the annual turnover does not exceed 3 billion Norwegian kroner; and
- the authorised organisation receives a minimum of 50 per cent of the turnover.

Lottery authorisations are valid for one year.

If a lottery activity is to be held in a fixed location, the proprietor must have authorisation. Likewise, an operator must have authorisation if the lottery is entrusted to it in return for payment.

Director, officer and owner licensing

11 | **Must individual directors, officers or owners of licensees also be licensed or reviewed for suitability?**

There are no licences for individuals, although they may be subject to requirements under the various authorisation regimes. For example, applicants for authorisations may be required to submit:

- a police certificate of good conduct of the organisation's chair of the board, the proprietor or other participants;
- financial statements, annual reports and an auditor's report; and
- articles of association.

Authorisations may be revoked if the licence holder has breached the terms of the authorisation or Norwegian law. Authorisations may also be revoked where a gambling device used in the gambling activity does not perform satisfactorily or where the holder has breached public order or otherwise facilitated the creation of an environment harmful to children and adolescents.

Location

12 | **May a gambling location be part of a resort, restaurant or other multi-purpose location? What limitations apply?**

No.

Casino development

13 | **What considerations arise in developing a casino resort project that are not typical to other resort development?**

Land-based casinos are prohibited under Norwegian law.

Passive/institutional ownership

14 | **Are there provisions for passive or institutional ownership that allow for exemption or modification of licensing requirements?**

No.

Responsible gambling

15 | **What responsible gambling obligations apply to licensees?**

As a rule, authorisation for gambling activities is usually granted only where the licence holder has a humanitarian or socially beneficial purpose. In assessing whether authorisation should be granted, the Gaming and Foundation Authority will consider the degree of a socially justifiable distribution of the income from the gambling activity (eg, lottery or bingo) and the ability to ensure that minors do not partake in the activity.

The Gaming and Foundation Authority may stipulate additional conditions for the authorisation related to combating gaming addiction.

Taxes

16 | **What type of tax and what tax rate applies to each form of lawful land-based gambling activity?**

Winnings that are considered incidental prizes and exceed 10,000 Norwegian kroner are taxable at a rate of 28 per cent (under sections 5 to 50(1) of the Taxation Act). For professional gamblers, winnings may be considered income through self-employment. As such, they will be taxed as tradespeople and can deduct costs incurred through such activity. Winnings from foreign gambling operators are taxable on the same level as winnings from Norwegian-based operators.

Prizes won from lotteries held for the benefit of a humanitarian or socially beneficial aim (eg, those provided by Norsk Tipping and Norsk Rikstoto) are exempt from taxation. This exemption may apply to winnings from gambling operators based in other EEA countries that are comparable to the gambling activities or lotteries legally available in Norway and subject to public oversight and control in the applicable country.

REMOTE GAMBLING

Types

17 | **Is remote gambling permitted and, if so, what types?**

The state-owned monopolies Norsk Tipping and Norsk Rikstoto are the sole licence holders of the right to provide online and mobile gambling in Norway. However, it is not illegal for Norwegians to gamble on foreign-based remote gambling platforms, nor is it illegal for foreign-based operators of such platforms to tacitly provide Norwegian consumers with such services.

Licensing

18 | **What are the criteria for obtaining a licence to operate remote gambling?**

The criteria for obtaining a licence to operate remote gambling are the same as those for land-based gambling.

19 | How do the licensing criteria for remote gambling operators differ from those applicable to land-based operators?

The licensing criteria for remote gambling operators and land-based operators do not differ.

Cross-border gambling

20 | May operators located in other countries offer internet gambling to consumers in your jurisdiction without obtaining a licence there?

Despite Norway's strict gambling laws, Norwegian consumers can legally gamble on foreign-based websites hosted by foreign-based gambling operators without violating Norwegian law. Likewise, foreign-based operators may tacitly offer their services to Norwegian consumers, if they hold a licence in another EU or EEA member state.

The Norwegian authorities may pierce the veil if they suspect that a Norwegian operator with a predominantly Norwegian customer base locates its operations abroad to circumvent Norwegian law. The prohibition of the provision of gambling or appurtenant services is generally technology-neutral. Norwegian-based operators are prohibited from providing gambling services indiscriminately to any customer, regardless of nationality, if such services are provided on a website that is hosted on a server located in Norway. It does not matter if the website uses a foreign domain name.

Even operators that have no connection to Norway may be liable if they align and facilitate their business in such a way to provide services to customers in Norway.

While a foreign-based operator may legally offer its services to Norwegian consumers, the Norwegian Gaming and Foundation Authority may still seek to hinder its business by enacting resolutions prohibiting Norwegian-based financial institutions and payment service providers from facilitating gambling-related payments between gambling operators and their customers.

21 | May operators licensed in your jurisdiction offer internet gambling to consumers in other countries?

The state-owned monopolies Norsk Tipping and Norsk Rikstoto are the only legal online gambling operators in Norway and have no mandate to operate abroad.

Taxes

22 | What tax rate applies to each form of remote gambling?

Winnings that are considered incidental prizes and exceed 10,000 Norwegian kroner are taxable at a rate of 28 per cent (under sections 5 to 50(1) of the Taxation Act). For professional gamblers, winnings may be considered income through self-employment. As such, they will be taxed as tradespeople and can deduct costs incurred through such activity. Winnings from foreign gambling operators are taxable on the same level as winnings from Norwegian-based operators.

Prizes won from lotteries held for the benefit of a humanitarian or socially beneficial aim (eg, those provided by Norsk Tipping and Norsk Rikstoto) are exempt from taxation. There are no specific rules on taxation regarding remote gambling.

INTELLECTUAL PROPERTY

Patents

23 | Are gambling games – land-based or remote – patentable in your jurisdiction?

Yes, gambling games are patentable in Norway, provided that the game is considered a product, process or method that is new, innovative and useful.

The game must possess a technical character and technical effect and be capable of being manufactured (ie, reproducible). As the game must be useful, it must work. If the game is meant to be a source of income, it must also be considered to be useful to someone.

Business concepts are not patentable under Norwegian law.

Trademarks

24 | Are there limitations on how brands, logos or other types of marks may be used in promoting gambling games?

The marketing of gambling activities in Norway is strictly prohibited. However, Norwegian consumers are free to utilise foreign-based gambling services and the providers of such services are likewise free to market their services or those of other providers on their own website provided that this marketing is not considered to be directed at Norwegian users.

ADVERTISING

Restrictions

25 | What types of restrictions apply to advertising gambling games?

Excluding the state-owned monopolies, Norsk Tipping and Norsk Rikstoto, the marketing of gambling activities in Norway is strictly prohibited. However, this prohibition is not effectively enforced by the Norwegian Gaming and Foundation Authority due to a lack of resources.

If the marketing is conducted passively through a foreign-based company, it is likely to fall outside the scope of the prohibition and thus be considered legal. As such, Norwegian consumers are free to utilise foreign-based gambling services and the providers of such services are likewise free to market their services or those of other providers on their own website provided that this marketing is not considered to be directed at Norwegian users.

SUPPLIERS

Licensing

26 | What types of suppliers to gambling operators require licences?

Suppliers are not subject to specific licensing requirements.

Registration

27 | If licensing is not required, is there a registration or other process suppliers are subject to, and what triggers that process?

There is no other registration or process suppliers are subject to.

LABOUR AND EMPLOYMENT

Wage and hour rules

28 | Are there particular rules governing hours and wage treatment for casino employees?

Land-based casinos are prohibited under Norwegian law.

Collective labour

29 | Must casino employees be members of labour unions or similar organisations?

Land-based casinos are prohibited under Norwegian law.

ACQUISITIONS AND CHANGES OF CONTROL

Change of control

30 | How are licensee changes of control, and substantial changes in shareholdings of licensees, addressed?

Norwegian gambling law does not impose conditions or restrictions on changes of control or substantial changes in shareholdings of licensees.

Bankruptcy

31 | How are gambling licences treated in bankruptcy?

Gambling licensees are treated the same as other debtors undergoing bankruptcy. There are no requirements to acquire approval from the Norwegian Gaming and Foundation Authority before taking possession of the assets of a gambling licensee. A gambling licence cannot be possessed, nor can debts be secured against such a licence.

QUASI-GAMBLING

Regulation

32 | How are forms of 'quasi-gambling' regulated? Are any treated as 'gambling', and what triggers such treatment?

Where fantasy sports or other forms of quasi-gambling fall under the classification of a 'lottery' under Norwegian law, such activities are treated in the same way as traditional gambling activities. This classification depends on the fulfilment of three conditions:

- consideration;
- winnings; and
- total or partial chance.

Norwegian law interprets the term 'winnings' broadly, in that the provision of private emails, the use of a telephone with payment beyond the normal rate or where the participation requires paid membership will be treated as a deposit. Free games are not considered gambling.

Pure skill gaming does not have the element of chance; therefore, it is not treated as gambling under Norwegian law.

Licensing

33 | Does your jurisdiction license quasi-gambling operators?

Where the quasi-gambling activity is considered a 'lottery' under Norwegian law, it is subject to the same requirements as traditional land-based or remote gambling activities.

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Other restrictions

34 | Does your jurisdiction impose other restrictions on the conduct of quasi-gambling activity, including restrictions on advertising, age of participation, limitations on prizes, etc?

Where the quasi-gambling activity is considered a 'lottery' under Norwegian law, it is subject to the same restrictions as all other forms of gambling.

LITIGATION

Recent cases

35 | What, if any, significant litigation involving the gambling or quasi-gambling sectors has your jurisdiction seen in recent years?

The Norwegian Gaming and Foundation Authority was embroiled in a court case in 2019 regarding the legality of the Authority's resolutions to financial institutions concerning the rejection of buy-ins, entry fees, stakes and winnings to and from foreign-based gambling operators. Payment service provider Entercash Ltd and the European Gaming and Betting Association initiated proceedings before the Oslo District Court on 22 May 2018. In August 2019, the Oslo District Court ruled in favour of the Norwegian Gaming and Foundation Authority, thereby clarifying that the payment blocking resolutions are not contrary to the EU Revised Payment Services Directive (PSD2).

In October 2019, the Oslo District Court ruled against the Norwegian company Norsk Lotteri AS, which brought a case against the Norwegian government claiming that the Norwegian gambling monopoly was in violation of the EEA agreement. Norsk Lotteri argued that the monopoly, as an exception to the freedoms of the European Union, failed to fulfil the three requirements necessary for a valid exception. An exception must fulfil a legitimate purpose, be suitable for such purpose and be necessary to achieve a certain level of protection. The Court ruled in favour of the government as it found that the Norwegian gambling monopoly fulfilled the requirements.

In December 2019, the Oslo District Court ruled in a case brought by Trannel International Ltd (owned by Kindred Group) and the Norwegian government, whereby Trannel argued that the payment-blocking regime was in violation of the Norwegian constitution and international law. The Court ruled in favour of the government.

UPDATE AND TRENDS**Key developments of the past year**

- 36 | Highlight any noteworthy developments or trends in the gambling or quasi-gambling sectors (legal or business) and their potential implications.

The Norwegian Ministry of Culture held a public consultation phase for a proposed Gaming Scheme Act that ended on 29 September 2020.

The proposal seeks to unify the Lottery Act, the Gambling Scheme Act and the Totalisator Act. If enacted, the proposal will bequeath the Norwegian Gaming and Foundation Authority with expanded investigatory powers, as well as the ability to issue certain fines for gambling-related violations and order internet service providers to issue domain name system notifications to Norwegians when visiting the websites of foreign-based gambling operators.

It is currently not known if or when the proposal will be transposed into law.

Coronavirus

- 37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

No emergency legislation, relief programmes and other initiatives specific to gaming have been implemented in Norway to address the pandemic.

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