



ICLG

The International Comparative Legal Guide to:

Gambling 2017

3rd Edition

A practical cross-border insight into gambling law

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Mexico

Carlos Fernando Portilla Robertson



Portilla, Ruy-Díaz y Aguilar, S.C.

Ricardo Valdivia González



1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The regulation, authorisation, supervision and discipline of Gambling and Raffles activities, when gambling with bets of any kind is involved, are under the responsibility and charge of the state executive power through the Ministry of the Interior; more specifically, the Gambling and Raffles Bureau. There are four main types of gambling and raffles permits: i) for opening and operating horse race betting, greyhound racetracks, frontons, and for setting up gambling facilities as well as raffle and lottery rooms; ii) for opening and operating gaming fairs; iii) for opening and operating temporary off-site horse race betting and cockfighting; and iv) for holding any of the regulated types of raffles, that might involve: a) the sale of tickets; b) no sale of tickets; c) instant raffle; d) raffles in marketing systems; e) raffles of numbers or symbols; and/or f) raffles of numbers or symbols through machines.

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

The main legislation for gambling activities is the Gambling and Raffles Federal Act and its Regulations. The former establishes, as a general rule, that gambling is a forbidden activity in Mexico; however, there are exceptions wherein gambling is permitted:

- I. chess, checkers and similar games; dominoes, dice, bowling, skittles and pool; ball games in every variety and denomination; people racing, car racing, animal racing; and, in general, every kind of sport; and
- II. raffles.

The regulations establish that the Ministry of Interior may grant an authorisation for the installation and operation of establishments for gambling and raffles, as well as for the opening and operation of horse race betting, greyhound racetracks and cockfighting, as well as to supply gambling facilities and raffle and lottery rooms, and to operate gaming fairs.

Additionally, other legislation that impacts the industry includes: the Tax-related Acts (Federal and local); the Federal Consumer Protection Act; the General Health Act; and the Customary Law.

For the regulation of the establishments, local administrative acts regarding opening licences, Civil Defence, Fire Services, Environmental Defence and Demographics, etc., are relevant.

2 Application for a Licence and Licence Restrictions

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

Exclusively Mexican legal entities – commercial companies duly formed and registered under the Business Entities Act – can apply for a licence to supply gambling facilities.

Regarding foreign investment, there is no prohibition, limit or restriction for a foreign company to hold 51% or more of the shares of a Mexican gambling entity (operator or permit holder). Nevertheless, paragraph I of article 20 of the Regulations establishes that permits for casinos will only be granted to Commercial Mexican companies. Individuals may request to hold any of the permits described in paragraphs III and IV of article 20 (temporary off-site horse race betting and any of the regulated types of raffles).

2.2 Who or what entity must apply for a licence or authorisations 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?

Exclusively Mexican Commercial legal entities can apply for a licence from the Ministry of the Interior in order to conduct any of the permitted gambling and raffles activities described in paragraph I of article 20 (casinos). According to article 30 of the Regulations, the permit holder can jointly exploit, along with a third party as an operator, its permit, if and when it meets every requirement set out in the gaming legislation, and prior authorisation from the Ministry of the Interior. Generally speaking, goods and/or services suppliers do not require any authorisation from the Ministry of the Interior, except for the services suppliers referred to in article 20 of the Special Tax Law on Production and Services (“IEPS”). These are information services which operate computer systems through which the online and real-time information of any establishment belonging to the main gambling system, including the cash teller’s activity and control system, are consolidated and permanently provided to the Tax Administration Service (“SAT”).

2.3 What restrictions are placed upon any licensee?

The restrictions are established in the permit and/or in the Regulations. Among the most regular restrictions that we can find are those that require the permit holder: i) to abstain from operating gambling games and raffles other than those explicitly authorised by law and/or permits; ii) to apply for an authorisation, or if it is the case, notify the Ministry of the Interior the opening or change of address of a gambling facility; iii) to abstain from assigning, transferring or selling the permit; iv) to abstain from giving credit to players/gamblers; v) to abstain from installing casinos within 200 metres of an educational institution or religious centre; vi) to abstain from allowing the admission of underage players or people under the influence of alcohol or drugs into the establishments; vii) to inform the Ministry of the Interior of any change in the shareholder structure of the permit holder; viii) to forbid the shareholders of the permit holder to be individuals or legal entities resident in territories with tax advantages or jurisdictions with low tax rates; and ix) to forbid the acquisition of shares of the permit holder, directly or indirectly, through trusts.

Additionally, permit holders must fulfil other obligations, such as incorporating terms and conditions for better corporate practices, and holding a board of directors comprising 25% independent administrators, as well as administrative obligations such as: granting and updating guarantees; adhering to local legislation, such as keeping inventory reports; obtaining civil protection permits; guaranteeing public safety; paying customs and taxes; and filing annual tax returns and authority reports.

2.4 What is the process of applying for any gambling licence or regulatory approval?

To submit an application to conduct any of the permitted gambling and raffles activities described in paragraph I of article 20, the applicant must meet all of the requirements established in article 22 of the Regulations (such as to submit the articles of incorporation). Every shareholder of the applicant legal entity must submit the following information and documentation: a) name, nationality and address; b) property and financial statements; c) *résumé*; d) professional or patrimonial links with other permit holders, shareholders, advisors, beneficiaries or staff members; e) an affidavit stating they have no criminal record or history of bankruptcy; and f) a credit report from a credit information company.

Legal entities must submit: a) a copy of the articles of incorporation with all of its modifications; b) balance sheets and statements of income; c) a list of names, nationalities and addresses of the members of the board of directors and statutory auditor; d) a list of shareholders; and e) the identity of the final beneficiaries.

Other documents must be submitted such as the operation, maintenance and investment programmes, the organisation manual, etc. Once the application and documentation has been submitted, the Ministry of the Interior will have a three-month time limit to grant or reject the application. It should be mentioned that this is only the first step toward beginning operating activities.

2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

The permits granted through the Ministry of the Interior for opening and operating horse race betting, greyhound racetracks, frontons, and for setting up gambling facilities as well as raffle and lottery

rooms, and under the Gambling and Raffles regulations, normally contain different expiry dates which range from between one and 40 years. In some extraordinary cases, the expiry date is unlimited. After the period has lapsed, the permit may be extended or renewed.

Permits also contain other obligations that can be divided into corporate, administrative and tax-related, which may be fulfilled periodically at monthly, quarterly and annual intervals.

The Regulations provide grounds to impose a fine to the permit holder and to revoke the permit under certain circumstances, such as severe cases of breach and/or recurring infringement conducts. This revocation must affect operators' authorisations too. Non-compliance of the requirements set forth by law may result in its temporary or permanent closure of the facility.

2.6 By product, what are the key limits on providing services to customers? Please include in this answer the material promotion and advertising restrictions.

Gaming equipment can only be leased or sold to authorised permit holders, operators and establishments. Gaming equipment must be legally imported. Only players above the age of 18 are allowed to participate in betting activity. It is forbidden for organisers and their employees to participate in raffles. All bets must be made in the national currency (pesos). Establishments are not allowed to grant credit or loans to participants. Generally speaking, live gaming is forbidden.

According to the Gambling and Raffles Federal Act, the promotion and advertising of such activities must be approved by the Ministry, and must comply with the following guidelines: (i) it must be expressed in a clear and precise way, in order to avoid inducing the public into an error, deceit or confusion of the services rendered; (ii) it shall include messages indicating that the games and raffles are prohibited for minors; and (iii) it must include messages that invite people to play responsibly and primarily for the purpose of entertainment, fun and recreation.

2.7 What are the tax and other compulsory levies?

The following taxes are applied to gambling operations in Mexico:

- Income Taxes. Mexican residents for tax purposes, such as Mexican corporations, must pay an income tax called *Impuesto Sobre la Renta* (Profit Tax) at a rate of approximately 29%, which is applied to their entire income (regardless of its origin) minus authorised deductions (expenses). Casinos also may pay an income tax called *Impuesto Especial Sobre Producción y Servicios* ("IEPS").
- The Ministry of the Interior's ("SEGOB") Licence Fees. A licence fee has to be paid by permit holders to SEGOB in an amount of 1% or 2% of their income, depending on the origin of the bet and their permits. Generally, the fee is 2% on horse or dog racing and 1% on national and international sport events.
- Local and State Taxes. Some Mexican states impose additional taxes to be paid by casino users (like value added tax). The tax applies to the amount of the prizes received by the users or for each machine installed.

2.8 What are the broad social responsibility requirements?

The prevention of addiction and compulsive gambling, money laundering and criminal acts committed through authorised establishments or through the black market. Another of the main

obligations is related to the protection of participants, especially participants under 18 and vulnerable persons. The Ministry of the Interior has established several obligations and activities which include training programmes for employees, to provide information in regard to responsible gaming and to post warnings related to responsible gaming. The Interior and Health Ministries are working to treat pathological gambling disease through programmes, training, information and clinics.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

Gambling permit holders and operators, either online or offline, are required to comply with the regulations established in the following laws, among others: the specific implications of the Federal Law on the Prevention and Identification of Transactions with Funds from Illegal Sources (the “Anti-Money Laundering Law”); the Regulations to the Federal Law on the Prevention and Identification of Transactions with Funds from Illegal Sources (the “Regulations to the Anti-Money Laundering Law”); and the General Rules referred to by the Federal Law on the Prevention and Identification of Transactions with Illegal Resources (the “Anti-Money Laundering Rules”). The above all identify activities related to the use, operation and practice of gambling as “Vulnerable Activities”.

In order to meet regulations, operators are required to produce a Manual which sets forth solutions to comply with the due diligence demands contained in law.

Foreign currency will not be valid in Mexico, except in cases where the law expressly provides otherwise. Payment obligations in foreign currency contracted within or outside of Mexico to be fulfilled in the country, will be paid in the equivalent currency in Mexican pesos, on the exchange rate in force at the place and date on which the payment is made. Payment in foreign country will be valid if parties agree so.

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?

According to article 76 of the Regulations, remote betting centres are the establishments authorised by the Ministry to take and handle bets for different events, such as sport competitions and games allowed by the law, carried out abroad or in the national territory, and transmitted in real time and in a simultaneous manner in video and audio (simulcasting), as well as conducting the drawing of numbers and symbols, in terms of article 85 of the law. Such establishments (remote betting centres) may take bets via the internet, by telephone or via electronic communications.

Online gaming operations do not require additional licences, but its mechanisms and controls must first be approved in writing by the Ministry, as established in articles 85 and 98 of the Regulations.

Online gaming is prohibited to participants under 18 and to vulnerable persons.

3.2 What other restrictions have an impact on online supplies?

In terms of article 86 of the Regulations, bets can be accepted by the establishment via the Internet, by telephone or via electronic communications, but only when the banking institution has confirmed via the Internet that a payment from the player has been received.

According to article 87 of the Regulations, in the dispensation of bet receipts, permit holders must comply with the following procedures: a) in the case of bets made via the Internet, it will not be necessary to issue a receipt to the participant, but the information regarding those bets shall be registered in the “central system” immediately after a bet has been paid by the player; b) players must have access to the supplier’s website containing all the information regarding their bets, for consultation or to print their receipts; and c) when participants are recruited via the Internet, they must have access to the information about their consumer rights. Online gaming providers must establish controls and issue warnings to prevent participants under 18 and vulnerable persons, as well as addiction, compulsive gambling and money laundering.

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

Gambling machines and terminals are only permitted in land-based casinos and temporary fairs and must be identifiable units and shall be approved by the testing and certification entity in compliance to the Official Standards (“NOM”). In Mexico, it is permitted to operate raffles using numbers and/or symbols through machines; meaning the use of an artefact, or device of any kind, in which a participant, subject to chance, may make a bet by inserting a token or any allowed electronic method of payment in order to win a prize. This machine must be connected to a central computer system that records transactions and totals generated by the bets, and must operate entirely electronically. The use of various machines and roulette tables are allowed. “Stand Alone” machines are prohibited.

4 Enforcement and Liability

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

The permit holder and operator entities will be liable and responsible for breaches of the relevant gambling legislation and other related laws, as well as the individuals who are authorised to conduct bets in terms of article 20 of the Regulations. The chief executive officers of the corporations may also be liable for breaches.

The Regulatory Authorities of gaming, including online gaming, are: a) Mexico’s Ministry of the Interior (“SEGOB”), which controls and inspects the operation of gambling and bets; b) the Tax Administration Service (“SAT”), which controls and regulates tax collection and issues; c) the Consumer Protection Agency (“PROFECO”), which controls and defends consumer rights related to gambling activities; and d) the Health Department, which monitors and regulates diseases related to gambling, such as pathological gambling.

4.2 What is the approach of authorities to unregulated supplies?

Mexico takes an aggressive stance against unlicensed and unregulated gambling, and the possession or use of unlicensed and illegal gaming devices may lead to very severe sanctions including fines and criminal liability. There is no defined policy, so it must be determined on a case-by-case basis.

4.3 Do other non-national laws impact upon liability and enforcement?

There are no non-national regulations or dispositions which directly affect the gambling and raffles sector.

4.4 Are gambling debts enforceable in your jurisdiction?

On this point, we must differentiate between bets that are allowed and bets that are prohibited. Regarding gambling, debts owed to a licensed establishment will be enforceable in Mexico; however, it should be noted that there should be no indebtedness, as the provision of credit or loans in these operations is prohibited. Therefore, participants must pay in advance or deposit an amount of money, which will entitle them to play up to the established debit. Prizes won by the participant are legally enforceable; furthermore, the regulations require the permit holders to guarantee such payments with a bond or suretyship.

5 Anticipated Reforms

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

A group of deputies have submitted to the Congress a new bill: the Responsible Games and Raffles Act. This document comprises 197 articles and nine Transitory Provisions, with special provisions related to responsible and fair gaming. The gaming activities referred to in the bill are: a) sports betting centres; b) gaming venues; c) racetracks, frontons and cockfighting; d) regional fairs; e) raffles and bets; f) live gaming; and g) online gaming.

It creates a new gaming regulator: the National Institute of Games and Raffles, as an agency of the Ministry of the Interior (“SEGOB”), with autonomous authority. It also creates a Consultative Council for the Institute.

New permits shall be effective for only one establishment and for a minimum term of 1 (one) year and a maximum of 10 (ten) years; however, that may be renewed.

All personnel under the permit holders and operators are required to be certified by the Institute.

All machines must be registered and certified by the Institute.

All gaming types and raffles and sweepstakes are approved.

Unfortunately, this new Act has not received any support from the Senate since 2015, and is unlikely to be approved within the next year.


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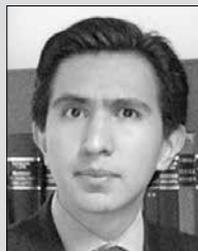
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Portilla, Ruy-Díaz y Aguilar (PR&A) was founded as a result of the combination of a group of experienced lawyers from Mexico and the US, who, motivated by the creation of a new law firm specialised in a variety of areas, and aware of the needs of a market increasingly demanding in obtaining customised, practical and effective legal services, joined their talent, professionalism and enthusiasm together to create this firm, seeking the offering and provision of integral gaming advice, compliance, corporate, IP, real estate, tax, contract, foreign investments, mergers and acquisitions, litigation, consumer protection, arbitration, preventive risk consulting, criminal litigation, labour law, immigration law, and international trade legal services.

Our law firm is characterised by the values of keeping a close and continuous contact with our clients, providing expert advice in a cost-effective manner and with creative arrangements, and with the highest commitment to the spirit of teamwork, obtaining the most effective, practical and appropriate results, based on the needs of our clients. Our goal is to find the best-fitting solution for each and every one of the needs of our clients, seeking primarily the avoidance of conflicts and risks in the ordinary course of business, or if needed, to solve, remedy and defend in a satisfactory fashion, the interests of our clients.

Indeed, the expertise, experience and the development of each department of the firm, coordination and support between the different departments and the deep knowledge of the reality and trends of the market and industry, grant to our customers innovative and timely comprehensive solutions with a proactive and strategic approach.

PR&A has a gaming law team of 10 leading lawyers with offices in Mexico City, Querétaro, and Cabo San Lucas, with a partner located in the US, who are responsible for overseeing and coordinating a group of lawyers and interns, being led by Carlos Fernando Portilla Robertson and Richard Krumbein, both founders and active partners of PR&A, with more than 15 years of experience in the gaming industry. Many of the leading manufacturers of gaming equipment are clients of the firm. PR&A is also legal counsellor to the Association of Gaming Equipment Manufacture (AGEM).

More detailed descriptions and further information is available upon request at cportilla@portilla.com.mx, or on our website www.portilla.com.mx.

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