

# Multiple Brazilian bills tackle controversial issue of i-gaming

## Bills to liberalise gambling are unlikely to be easily approved

Gambling is a highly controversial issue in Brazil. This is because such business has - throughout Brazil's modern history - been regarded as an area that is associated with illicit activities such as money laundering, organised crime, and scandals involving corrupt politicians/public agents.

As a result, gambling is a prohibited practice, classified, however, as a criminal contravention (but not a crime), which is a misdemeanor/petty offence punishable by harsher imprisonment and/or penalty fines (Decree-Law N° 3,688/41 - Criminal Contraventions Law). Nevertheless, there are exceptions to such rules and certain games, such as those provided by the Governmental Lottery, horseracing at authorised racecourses, and the new sporting lotteries, are authorised.

In accordance with the Criminal Contraventions Law, gambling (known in Brazil as 'jogos de azar') consists of any game in which winning or losing depends exclusively or principally on luck or chance and is played in a public place or is accessible to the public. Additionally, scholars and certain jurisprudence also include the hope of money or economic benefit as an essential element for characterisation as a gambling activity.

Considering that Brazil has not yet enacted any specific regulations for online gaming - not even the Brazilian Internet Legal Framework known in Portuguese as the 'Marco Civil' regulated the issue - the main discussion regarding the application, or not, of the definition above to online gambling lies in whether the internet should be considered a public place or one that is accessible by the public.

Accordingly, it must be ascertained whether the language used by the law (that arose from a period of time in which technology such as the internet was inconceivable) is sufficiently broad (without having to resort to analogy, which, under Brazilian criminal law, can only be used if the same favours the defendant) to treat the internet as a place accessible by the public.

In this respect, one could say that online gambling does satisfy the requirements established by laws in force in Brazil, especially since the internet can indeed be deemed a place or space accessible by the public and, in fact, is probably the most accessible space worldwide.

Another controversial issue to be discussed as far as online gambling is concerned is the fact that scholars and some case law also include the hope of winning money or an economic benefit as an essential element of gambling activity. Accordingly, the main discussion here is whether 'virtual currency' can be considered 'money or an economic benefit.'

There are currently certain bills of law relating to gambling being reviewed by the Brazilian Congress. On the one hand, three of them seek to maintain or introduce restrictions on the gambling industry (Senate Bill No. 121/2004, House of

Representatives Bill No. 2.429/2007 and Senate Bill No. 255/2009). For instance, House of Representatives Bill No. 2.429/2007 aims to prohibit betting on any form of sporting event, by any form of data transmission within Brazil, including in Brazilian territorial waters and national air space. The sole exceptions to this prohibition are federal sporting lotteries and federal and state lotteries authorised by law. The bill also determines that financial institutions and credit and debit card companies and any participants of the Brazilian National Financial System are prohibited from effecting any electronic transfer of monies for payment of any such activities, under penalty of a fine equivalent to two hundred times the amount of the electronic transfers made. This bill was inspired by the Internet Gambling Enforcement Act of the United States of America. The bill is ready to be voted on. However, there is no forecast as to when this will take place.

On the other hand, there are two bills seeking to liberalise the gambling industry (House of Representatives Bill No. 2.254/2007 and Senate Bill N° 186/2014). House of Representatives Bill No. 2.254/2007 aims to legalise bingo parlours and electronic gambling (which could result in the bill of law also extending to online gaming and betting). While the bill is progressing through Congress and may shortly be submitted to the Plenary of the House of Representatives, certain politicians vigorously oppose this bill.

Senate Bill N° 186/2014 aims to develop gambling as a business; it also defines what the games are, what authorisations are needed, how the funds arising out of such activity should be allocated, as well as punishment of administrative infractions and crimes for violation of the regulations relating to the exploration of gambling. The bill is awaiting distribution to a Reporting Member of the Senate for discussion.

Although there are bills in favour of the gambling industry in Brazil, it is probably unlikely that these bills are going to be easily approved, especially because of the strong association of gambling with illicit activities in Brazil.

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