

Brazil

A Gambling Compliance Regulatory Report

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Background

With a total area of 8,514,877 square kilometers and a population of 190 million, Brazil is the largest and most populated country in Latin America. Politically, the country is a federation integrated by twenty-six states (estados), one federal district (Distrito Federal) and 5,564 municipalities. Brazil has approximately 26 million internet users (2005) and 86 million mobile phones (2005).

Given its huge economic potential and growing population, Brazil has often been tagged with the label of “country of the future” and is undeniably considered to be an emerging world economic power. The Brazilian economy has been growing constantly in the last decade, registering a 3.6 percent growth in 2006. However, poverty, corruption and violence remain prevalent throughout the country. According to official figures, in June 2006 the rate of people living below the poverty line based on labour income was of 18.57 percent of the population.

For most of the twentieth century, almost all gambling activities were prohibited in Brazil. However, at the start of the 1990’s, the government changed its position and allowed the commercial exploitation of bingo and slot machines as a way of funding sport activities, starting a ten year period of gaming expansion. The honeymoon between the gaming operators and the government was over in 2004 after a series of political scandals tainted both government officials and leading gaming entrepreneurs, situation that almost caused the total prohibition of all bingo and slot machine activities in the country.

The political storm over gambling is not over. Bingo and slot machines continue to work in Brazil without a clear regulatory framework and this industry is under strong pressure from the government and the Federal Courts.

Despite the undoubted potential of the Brazilian market, foreign operators have mostly maintained themselves out of Brazil waiting for a more favourable political environment and clearer regulation to be enacted. On the other hand, scandals related to the gaming industry have slowed the government's movement toward the liberalization of gaming laws.

Regulatory Environment

Criminal Contravention Act

No analysis of the Brazilian gaming regulation is complete without the mention of the Criminal Contravention Act 1941 (Law Decree No. 3.688). This law rules that the offering of games of chance is prohibited and criminalized in Brazil. The Act rules that establishing or operating games of chance in a public place is subject to imprisonment for three months to one year. The Act defines “games of chance” as (i) a game in which winning or losing depends exclusively or principally on luck, (ii) bets on horses outside the racetrack or other places where such races are authorized and (iii) bets on any sport competition.

The Criminal Contravention Act has not being abolished. Therefore, any form of gaming activity that has not been regulated in an independent piece of legislation may be considered under the scope of the Act and therefore prosecuted.

Casinos

Before 1946, Brazil allowed the operation of casinos. Rio de Janeiro, São Paulo and Minas Gerais were the three states considered as capitals of the Brazilian casino industry, in a time when legendary musical shows were performed in the big saloons of casinos such as the Copacabana Palace, Quitandinha, Atlântico, Urca, Parque Balneário Hotel, and the Grande Hotel de Araxá.

However, in 1946 the Brazilian government enacted the Decree-Law No. 9215 annulling all licences, authorizations and concessions previously granted by the federal, state, and municipal governments. This law also expressly returned casino gaming under the scope of the Criminal Contravention Act. As a result of this, there has been no casino gaming in Brazil since 1946.

International casino operators and the tourism sector have lobbied to see the reintroduction of casino gaming in Brazil and have received support from both the populous, industrialised states of the south (Rio de Janeiro, São Paulo and Minas Gerais) and those that rely heavily on tourism (Bahia, Ceará and Santa Catarina, as well as Rio). Yet, it is still not clear whether the government is heading towards the legalization of casino activities.

Lotteries

The Caixa Econômica Federal (La Caixa), Brazil's largest state-owned public bank, controls the national lottery and nine other federal lotteries. La Caixa obtained the control of the lotteries as a result of the 1961's Decree No. 50.954, which withdrew all the concessions and lottery licences that had been granted to the private sector.

1967's Law Decree No. 204 created the first national lottery (Federal Lottery), giving the administration and the monopoly of this form of gaming activity to La Caixa. In the last years, the Caixa has started operating new gaming forms such as instant lotteries (Instantanea), sport betting (Lotogol), amongst others. It is expected that in the following months, La Caixa will start operating a new form of sporting lottery called Timemania created by the Lula government to assist Brazilian football clubs.

In addition, Brazil's 26 federal districts are authorized to run their own state lotteries (of which 17 do so). After the legalization of bingos and slot machines in 1993, Brazilian state lotteries started to enter in new gaming fields, authorizing bingo venues, slot machine parlors and even online gaming, under the cover of state laws that allowed such activities in the state. Yet, since 2004 the Supreme Federal Tribunal of Brazil (the highest court in Brazil) ruled that states are only empowered to regulate matters related to lottery gaming and not other forms of gaming, such as bingo and slot machines which are regulated exclusively in the Federal sphere as this constitute an exclusive federal attribution. Consequently, the Supreme Federal Tribunal has been declaring state gaming legislation that deal with gaming, other than lotteries, unconstitutional.

The State Bingo Association and private entrepreneurs are hoping that the Brazilian Congress approves Bill 472/2007 which will set better conditions for the State lottery market. This bill would authorize Federal States and the Federal District to exploit lotteries in their territories, directly or through third parties. Under the propose State lottery scheme, the CAIXA will have to authorize all new forms of state lottery games. On the other hand, States will not be able to exploit games with

similar characteristics to the ones offered by the CAIXA. This could allow State lotteries to licence games such as bingos.

Yet, according to Alberto Peredne of the Associação Brasileira dos Bingos – ABRABIN, this bill, if approved, could be declared unconstitutional by the Supreme Court, as there is a previous resolution of the Supreme Court signaling that laws dealing with state lotteries are unconstitutional.

Bingo and Slot Machines

Bingos and slot machines have a very problematic history in Brazil. Eventhough there are large number of bingo and slot machine parlours operating, it is not clear whether these activities are forbidden or not in Brazil.

The problem is that at present there is no federal legislation expressly dealing with bingo and slot machine operations. The government considers that bingo and slot machines are prohibited under the terms of the Criminal Contravention Act. On the other hand, bingo operators believe that the laws that originally authorized these gaming forms (the now abolished Zico and Pele Laws) took bingo and slot machine operations out of the scope of the Criminal Contravention Act and, therefore, even when these forms of gaming are not expressly regulated, they are not forbidden.

Bingo halls continue working thanks to court injunctions granted by state and federal judges that have effectively prevented police forces from shutting them down. Politicians are now trying to decide whether if they need to outlaw bingo halls completely or regulate such activities in order to introduce stricter controls and regulation as a way of tackling the endemic corruption that plagues this industry.

Recently, Brazilian Deputy Antonio Carlos Mendes Thame has proposed Bill 883/2007 that, if approved, will preclude judges to issue injunctions (liminares) to protect gaming operators of closing procedures initiated by government authorities. Also, this bill will prevent judges to issue authorizations destined to reopen bingo venues, when these have been closed by authorities.

This proposal has been motivated as a result of the existence of a “liminare industry”, that provides shelter to illegal operators, that continue operating as a result of the lack of clear regulation. At this moment, the bill is being reviewed by the Constitutional, Justice and Citizenship Commission of the Deputies Chamber.

There appear to be some hope for bingo businesses in Brazil. In March 2008, President Lula instructed Jose Mucio Monteiro, the Secretariat of Institutional Relations, to recommence discussions with bingo workers, operators and MPs in order to reach a legislative solution to the bingo problem. The idea is to review the existing legislative proposals to regulate bingo, currently pending in the Brazilian Chamber of Deputies and in the Senate, and begin negotiations in order to formulate a single legislative project.

However, the new project will not include slot machine activities within its scope, in effect, meaning that this gaming activity will continue to be forbidden in Brazil.

Industry observers believe that this time President Lula has good reasons to finally settle the bingo problem. The legalization of the bingo industry could be a very popular decision for his Government as this move will secure the existing jobs in that industry and generate thousand of additional jobs.

On the other hand, gambling is seen as a new source of public revenue that could help the Government fund sporting activities in the country. According to the Brazilian Bingo Association (Abrabin), bingo activities could increase tax revenues by R\$ 2.6 billion and generate 120,000 new jobs in Brazil's economy.

Horse Racetracks

Horse track betting has a long tradition in Brazil and has not suffered from the constant legislative uncertainty that other gaming sectors have endured. This activity benefited by the fact that it was never included under the scope of the Criminal Contravention Act. Presently, horse racetrack betting is regulated by Law No. 7291 enacted in December 1984 and its 1988 regulation (Decree 96.993).

The organization of horse racetracks and the exploitation of horse betting activities are supervised by the Comissão Coordenadora da Criação do Cavalo Nacional (CCCCN). Therefore, entities interested in exploiting horse betting activities have to file for an authorization to the CCCCCN.

Bets on turf competitions can only be taken in authorized racetracks, in turf organizations and their authorized branches or in authorized betting agencies. Authorized racetrack bookies may also exploit sweepstakes or other forms of lotteries, if they satisfy the condition established by the CCCCCN and the General Secretary.

Betting organizers will have to pay a monthly contribution to the CCCCCN established on the basis of the bets taken in the previous monthly period. The contribution's rates are established in a progressive accumulative scale and will vary depending on a Reference Value (RF) published by the CCCCCN. The contribution rate scale is the following:

- Bets between 1 to 2,500 RF will be exempted.
- Bets between 2,501 and 3,500 RF will be burden with a 0.5 percent rate.
- Bets between 3,501 and 4,000 RF will be burden with a 1 percent rate.
- Bets over 4,001 RF will be burden with a 1.5 percent rate.

Until recently, pari-mutuel wagering was only permitted on local races. In 2005, the Ministry of Agriculture issued the Normative Instruction No. 27 authorizing betting over international simulcast races. This has allowed the Spanish group CoderePortfolio info about Codere to enter into the Brazilian market through 10-year exclusivity agreements with some of the main national Jockey Clubs in Brazil. Codere intends to have 10 facilities in operation by the end of 2007, offering betting on local and international races for Brazilian customers.

In 2007 simulcasting activities in Brazil provided US\$ 19.1 million revenues, establishing a major revenue increase in comparison to activities in 2006.

Recently, in March 2008 the Ministry of Agriculture under pressure from La Caixa revoked Normative Instruction No. 27. In accordance with the revocation decree issued by the Ministry of Agriculture, authorized jockey clubs have now until the end of April 2008 to cease international simulcasts or face prosecution under Brazil's Criminal Contravention Act. Codere and the Brazilian racetrack owners are now looking to use the time remaining to lobby the attorney general's office and the Ministry of Agriculture to re-examine their stance on international simulcasting.

Online gambling

Brazil federal legislation does not contain any provision related to the possibility of providing gambling services through the internet. Government officials understand that in application of the Criminal Contravention Act, these activities are illegal. Yet, Brazilian authorities have not been able to stop citizens from betting in web services offered from outside Brazil.

As a new development, Deputy Luis Carlos Hauly has submitted a bill to the Brazilian Chamber of Deputies that would establish specifically that online sport betting activities are illegal. The bill proposes the prohibition of "...bets on all sports events through any method of data transmission, especially the worldwide web, in the national territory, including sea or airspace." The only betting games exempt from the legislation would be sports betting games specifically authorised by law and operated by state and federal lotteries, including Caixa Econômica Federal do Brasil.

The bill also establishes that not only the illegal operator will be prosecuted, but also the player and the managers of those financial institutions that, directly or indirectly, participate in the process that culminates in the completion of the bets. This proposal is being reviewed by the Economy, Industry and Commerce Performance Commission.

In some way, this new legislative proposal shows how the 1941 Criminal Contravention Act is an outdated piece of legislation and cannot deal with new forms gambling, such as interactive gaming. For more information, see the following news article.

Money Laundering

The legislative framework to confront money laundering in Brazil is set by 1998's Law 9613. This law establishes the definition of the "money laundering" offence and the measures to combat these activities. This law creates the Conselho de Controle de Atividades Financeiras (COAF). This entity has been established in order to pursue, investigate and sanction any activity related to money laundering crimes. The COAF also issues directives to regulate activities of industries that may facilitate money laundering, such as gambling.

Resolution 3 issued by the COAF deals with Lotteries and entities related directly or indirectly with the distribution of any properties (money, real estate or other goods) through lottery games. Those entities must identify all prize winners and keep a register of all prizes of more than BRL 10,000 (approx. US\$ 5,240). The register must include the prize description, its value, and the date that it was handed over. This register must include the prize winner name, identification document, and the winner's address.

Lottery operators must pay special attention to prizes or distributions that may represent serious indications of or be related to the crimes defined in Law No. 9613. The following activities or situations must be reported:

- A sudden and continued increase in the collection of a certain product, in a particular location or establishment (especially products with a higher probability of winning), followed by an increase in the frequency of prizes for the same location or establishment.

- Payments of three or more prizes in values equal to or higher than 800 UFIR (Brazilian Tax Unit Reference) to the same CPF (taxpayer identification number) holder within twelve months.
- A sudden increase of high value bets in one particular type of game, with the possibility of covering a significant proportion of the winning combinations.
- Other prize distributions that due to the features concerning the parties involved, values, forms of execution, and type of instruments used may indicate or be related to the crimes defined in Law No. 9613.

Resolution 5 sets forth the procedures to be followed by the legal entities that operate bingo and/or similar games. Bingo operators must identify all prize winners and maintain updated records of any delivery and/or payment of prizes with values equal to or higher BRL 2,000.00 (approx. US\$ 1,050). This record must contain information on the type of prizes, the description of the assets, the values, dates of delivery and/or payment. Also, it must contain the name of the winners, identification documents, and address.

Operators must report any of the following situations or activities:

- A player bets an amount disproportionate to the prize expectation.
- A monthly accumulation of prizes by the same winner, in more than one drawing, of more than BRL 5,000.00 (approx. US\$ 2,620).
- A quarterly accumulation of prizes by the same winner, in more than one drawing, of more than R\$10,000.00 (approx. US\$ 5,240).
- An annual accumulation of prizes by the same winner, in more than one drawing, of more than R\$30,000.00 (approx US\$ 15,700).
- The payment of prizes of values higher than the amounts collected.
- Situations in which the winner is connected, at the same time, to the sporting entity and to the entity's administrator and/or operator.
- Other activities that, due to the features concerning the parties involved, amounts, forms of execution, type of instruments used, or the lack of economic or legal grounds, may indicate or be related to the crimes defined in Law No. 9613.

Further Developments

Brazil's status in the eyes of the global gaming industry is no different to those of other sectors and its gaming market must be considered the most coveted and problematic of all Latin American countries.

It is difficult to predict whether Brazilian authorities will belifting the casino ban or regulating the bingo industry in the immediate future. Yet, unemployment is still very high in Brazil and the country has a serious level of poverty. By passing appropriate regulations on bingo houses and lifting the casino ban, the government would stand a good chance of making significant progress in dealing with these issues as the gambling industry could be a good source of new employment. Furthermore, the liberalization of gambling activities could provide the Government a new source of tax revenues that would allow it to fund more development plans.

In the case of bingo, after years of trying to pass bills to ban bingo lounges, one bill has been presented, that if it is approved it will allow the continuity of bingo activities in Brazil and may set a bingo and slot machine regulatory framework. Amongst other issues, the bill proposed by Senator Garibaldi Alves Filho rules that the administration and control of bingo and slot machines will pass to state authorities and introduces the possibility of providing bingo games by electronic means. The Brazilian Bingo Association are optimistic of the success of this project as Senator Alves has been just elected Head of the Brazilian Senate. Yet, it has to be taken in consideration that many previous bills have stalled in Brazil's grinding legislative system.

Additionally to this bingo bill, the latest initiative of President Lula's Government to regulate bingo activities provides new hopes to bingo operators in Brazil. However, it is improbable that any new bingo regulation will be issued within the first half of 2008. On the other hand, the Government's initiative will not cover slot machine operations, leaving this industry in a legal limbo and in practice, remaining outlawed in the Brazilian market.

In the case of lotteries, the Financial Activities Control Board (COAF) has begun a review into existing lottery regulations. Reporting responsibilities are being reviewed with the COAF working in conjunction with the Federal Bank to promulgate new regulations covering the lottery sector to ensure transparency is enhanced. This review follows unsubstantiated claims of corruption and money laundering amongst lottery employees. [See related Gambling Compliance Article here.]

Deputy Alves Gaming Bill

At the beginning of September 2008 the Commission of Economic Development, Industry and Trade of Brazil Deputy Chamber approved a gambling bill proposed originally by Antonio Mendes and amended by Deputy Vicentinho Alves. If this bill is approved by the Brazilian Deputy and Senate plenary, it could mean the end of the bingo and slot machine regulatory uncertainty in Brazil.

An interesting issue regarding this bill is that it provides a much more liberal approach to gambling than other bills proposed in the Brazilian Congress.

First of all, it opens the possibility for the installation of casinos in Brazil, a possibility that has been closed since the government of Eurico Gaspar Dutra banned such gaming activity in 1946. According to the bill, casinos could only be installed in the North, Northeast and Mid-Western regions as a way of promoting economic development in such areas. Licences will be issued for a 10 year period through a public tender process, with the possibility of extending the licence for 10 additional years.

Initially, only 6 casinos will be authorized, allocating two in each region. After 5 years, an assessment will be made in order to see whether more licences should be issued.

The bill also authorizes the exploitation of videolotteries (slot machines) and bingo. Operators would be able to exploit videolotteries in casinos and bingo venues. Video lotteries should award prizes that cannot be inferior to 85 percent of the total collected bets, including these amount the applicable 30 percent Income Tax.

According to the bill, operators will have to pay a 15 percent royalty calculated over their gaming net revenue (collected bets less the paid prizes).

One of the positive aspects of this bill is that it consolidates proposals made by other bills (Bill No. 2944/04, 2254/07 and 3489/08), reducing the number of contradictory gaming bills under discussion in the Brazilian Congress (in September 2007 there were 45 gaming bills under discussion in the Brazilian Congress). Also, while approving Deputy Alves' bill, the Commission of Economic Development, Industry and Trade also repealed a series of law bills that proposed the banning of bingo and slot machines operations in Brazil (specifically Bills Nos. 1986/2003, 2999/2004 and 3492/2004).

Yet, Deputy Alves gaming bill still has a long way to go before it can be discussed in the Deputy Chamber's plenary. The bill has just been submitted to the Commission of Finance and Taxation for discussion, and later it will have to be reviewed by the Commission of Constitution and Justice and Citizenship.

Another hurdle this bill faces is the fact that after the Waldomiro Diniz scandal, Lula's Government is opposed to the possibility of gaming venues being permitted to install slot machines, preferring instead to proceed cautiously towards the regulation of gambling businesses in Brazil. Therefore, President Lula could oppose the enactment of a gaming law that includes slot machines as a permitted gaming activity.

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