

## LEGAL FRAMEWORK FOR ONLINE GAMBLING AND BETTING

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Decree-Law No. 66/2015

of 29 April

The publication of Decree No. 14.463, of 3 December 1927, brought a century-old tradition of gambling prohibitions to an end. Indeed, the 1867 Civil Code provided that *“the gambling contract as a means of earning is not permitted”*, while the 1886 Criminal Code also outlawed the activity of gambling operations, the profession of gambler, and occasional gambling.

Nevertheless, the desire to gamble was an insurmountable reality and, as a result, the preamble to Decree No. 14.463, of 3 December 1927, stated that *“gambling was a fact against which no proscriptive provisions could stand”*.

Thus, after weighing up and balancing all the values at stake – banning an activity that could potentially cause damage to individuals, families and society or, conversely, recognising that, despite the ban, it continued to exist –, it was deemed preferable to establish the terms and conditions on which the activity could be undertaken, regulating it and thereby protecting those involved, avoiding lawless behaviour and establishing limits for operating and engaging in this activity.

Once the ineffectiveness of the ban had been recognised, the regulation aimed at setting rules and establishes the conditions on which gambling could be carried on and who could engage in it. Gambling areas were set up with the aim of affording the conditions necessary for gambling to be carried on in a controlled environment, with guarantees of good standing, and reducing or eliminating the interest in illegal underground gambling. The paradigm shift which steered the actions of the State was also evident, discarding the criminal ban and seeking to modulate behaviour by way of taxation. Historically, therefore, the taxation of gambling became an effective regulatory component.

In 1989, the publication of Decree-Law No. 422/89, of 2 December, systematised the regulatory provisions governing the matter, envisaging all the types and forms of operating games of chance existing at the time. However, this decree-law maintained the regulatory line that had been followed since Decree No. 14.463, of 3 December 1927. Accordingly, through the special gambling tax (IEJ), a dedicated tax system was set up, with an assumed corrective purpose and with the specificities appropriate to the nature of the activity to be taxed. Moreover, the IEJ, by compressing the actual profit method to calculate tax payable, in its purest form, brought about the necessary distancing of the State from a direct interest in gambling.

Gambling in Portugal therefore went from being a prohibited and unregulated activity to a system of regulation which recognised that the right to operate games of chance is reserved to the State, while establishing the possibility of gambling operations being conducted under concession contracts.

Although several amendments were made to Decree-Law No. 422/89, of 2 December, its fundamental principles and form remained unchanged, and it was clear from its normative framework that the regulation of gambling does not seek to satisfy a need to intervene in a public interest activity, – as gambling is not a general interest activity which is required to be pursued –, but rather to control the spread of and unregulated engagement in gambling and regulate the way in which this control should be carried out.

However, since the approval of the above-mentioned Decree-Law No. 422/89, of 2 December, the operating of and engagement in this activity underwent major changes and the normative framework by which it is currently governed did not keep pace with these developments. Apart from the technological development of gambling systems and equipment, a new situation emerged which was not covered by the existing legislation and which, in recent years, has taken on a growing and undeniable significance – online gambling.

The current normative framework governing games of chance is unable to provide a response to the current dimension of this activity and it is necessary to regulate new operating forms which allow for a response to the developments seen in the market.

The operating model for games of chance in Portugal therefore needs to be reconsidered and, as it is an activity reserved to the State, such an exercise must primarily involve a change in the current normative framework that governs it, so as to enable it to keep pace with the developments and evolution seen over the last twenty-five years. This change is a determining factor, on the one hand, as a means of combating illegal gambling and, on the other, to assure balanced and transparent gambling operations.

Accordingly, a pressing need has arisen to create a new model for operating and engaging in online gambling, considered in the light of this reality and the existing legal vacuum.

It is in this context that the regulation of online gambling in Portugal takes on particular significance, requiring that its normative framework be set down in a dedicated instrument, in order to bring under the umbrella of the law the operators and players who currently gamble on the illegal market without any protection, while at the same time assuring the healthy functioning of the market. It is intended, in this way, to foster citizenship and responsible gambling and buttress the fight against the parallel economy.

The situation facing us today with regard to online gambling is comparable therefore to the one that existed in Portugal in 1927, before operating and engaging in games of chance became subject to regulation.

Today, online gambling is widespread all over the world and is a reality which the Portuguese State cannot ignore. Moreover, the last decade has witnessed a generalised trend towards online gambling legislation in Europe, which underscores the need to regulate this matter, in like manner, in Portugal.

Accordingly, the government has resolved to regulate online gambling by way of this decree-law, considering and reflecting herein the recommendations of the European Commission and the best practices being adopted in other countries.

From the outset, the legal remedies and principles laid down in the Legal Framework for Online Gambling and Betting (RJO) are appropriate and proportionate to the pursuit of the envisaged public interest objectives, in order to guarantee the protection of minors and the most vulnerable, to avoid fraud and money laundering, to prevent online gambling-related criminal behaviour and to safeguard the integrity of sport, preventing and combating the fixing of bets and results. Similarly, the RJO, by delineating and framing the supply and demand for gambling, and by controlling the operating of gambling, guarantees public safety and order, preventing excessive and unregulated gambling and addictive behaviours and practices

The RJO covers a broad spectrum of games, with the objective of affording competitiveness to the Portuguese market, as it is understood that only in this way will it be possible to reduce illegal online gambling by operators that make gambling available in Portugal and the players who access it.

Similarly to the situation in most European countries, the RJO provides that the operating of online gambling and betting must not be exclusive for some entities, even if these are already qualified to conduct gambling and betting operations in Portugal. Gambling operations must be awarded, by means of a licence, to all the entities which, in addition to these, satisfy stringent requirements regarding good standing and economic, financial and technical capacity.

As to the taxation model adopted, the RJO maintains its coherence with the regulatory logic which also guides it in respect of land-based games of chance, given the specific characteristics of the activities subject to taxation, as well as European best practices.

Finally, and with a view to assuring the effective application of the normative framework for online gambling in Portugal, the RJO confers, along with monitoring and inspection powers, true regulatory powers on the gambling supervisory body, affording it the powers and resources which will enable it to act effectively against the challenges posed by this new market. In this regard and once again in line with best practices and with the recommendations and principles embraced by the European Commission, this decree-law broadens the scope of regulation of the operating of and engagement in online gambling and betting, making provision in the RJO for the duties to monitor, inspect and regulate such

activities, which are entrusted to *Instituto do Turismo de Portugal, I.P.*, through its gambling commission and its Serviço de Regulação e Inspeção de Jogos, extending its scope of action to new types of gambling and betting and enhancing its powers and competences in these matters.

This decree-law was notified to the European Commission in compliance with Article 4 of Decree-Law No. 58/2000, of 18 April, which transposed into Portuguese law Directive 98/34/EC, of the European Parliament and of the Council, of 22 June 1998, as amended by Directive 98/48/EC, of the European Parliament and of the Council, of 20 July 1998, laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services.

Consultations were held with the governing bodies of the Autonomous Regions, the National Association of Portuguese Municipalities, the National Data Protection Commission, the Bank of Portugal, the *Santa Casa da Misericórdia de Lisboa*, the Portuguese Tourism Confederation, the Portuguese Casino Association and APRITEL - Electronic Communications Operators Association.

A hearing was held with the National Consumer Council.

Thus:

In the use of the legislative authority granted by Law No. 73/2014, of 2 September, as amended by Law No. 82-B/2014, of 31 December, and pursuant to indents a) and b) of Article 198(1) of the Constitution, the government decrees the following:

#### Article 1

##### Subject-matter

This decree-law approves the Legal Framework for Online Gambling and Betting and makes amendments to:

a) the Advertising Code, approved by Decree-Law No. 330/90, of 23 October;

b) the General Stamp Duty Table, attached to the Stamp Duty Code, approved by Law No. 150/99, of 11 September;

c) Decree-Law No. 129/2012, of 22 June, which approves the organic structure of the *Instituto do Turismo de Portugal, I.P.* (*Turismo de Portugal, I.P.*).

#### Article 2

##### Approval of the Legal Framework for Online Gambling and Betting

The Legal Framework for Online Gambling and Betting in Schedule I to this decree-law and an integral part hereof is hereby approved.

#### Article 3

##### Amendment to the Advertising Code

Articles 21 and 40 of the Advertising Code, approved

by Decree-Law 330/90, of 23 October, shall read as follows:

“Article 21

**Gambling and betting**

1 - The advertising of gambling and betting shall be conducted in a socially responsible manner, respecting the protection of minors, as well as of other vulnerable risk groups, highlighting the entertainment aspect of gambling and betting and not demean non-players, not appealing to aspects relating to obtaining easy winnings, not suggesting success, social achievement or special skills as a result of gambling, or encouraging excessive gambling or betting practices.

2 - Any advertising of gambling or betting which is aimed at or uses minors in the message is expressly prohibited.

3 - Any advertising of gambling and betting in schools or other infrastructures intended to be frequented by minors is expressly prohibited.

4 - It is further expressly prohibited to advertise gambling or betting within 250 metres in a straight line from schools or other infrastructures intended to be frequented by minors.

5 - In locations where events intended for minors are being held or in which these are taking part as main participants, as well as in commercial communications about and the advertising for such events, there shall be no reference, whether explicit or implicit, to gambling and betting.

6 - Gambling and betting concessionaires and/or operators may not be associated with any advertising reference to or mention of granting loans.

7 - Clause 4 shall not apply to State-run games.

Article 40

[...]

1 - [...].

2 - Overseeing compliance with Article 21, as well as managing the relevant administrative offence proceedings and imposing the corresponding fines and additional penalties, falls within the purview of the *Serviço de Regulação e Inspeção de Jogos* and of the gambling commission of *Instituto do Turismo de Portugal, I.P.*, pursuant to the terms set out in the relevant organic law.

3 - [Formerly clause 2].

4 - [Formerly clause 3].”

Article 4

**Amendment to the General Stamp Duty Table**

Item 11 of the General Stamp Duty Table, attached to

the Stamp Duty Code, approved by Law No. 150/99, of 11 September, shall read as follows:

“11 – [...]:

11.1 – Betting on games which are not liable to the special gambling taxes, including those represented by tickets, bulletins, cards, forms, raffles or tombolas – on the amount of the stakes;

11.1.1 – [...];

11.1.2 – [...].

11.2 – [...]:

11.2.1 – [...];

11.2.2 – [...].

11.3 – [...];

11.4 – [...].”

Article 5

**Amendment to Decree-Law No. 129/2012, of 22 June**

Articles 3, 5, 7, 9, 11, 13, 16, 19, 20 and 22 of Decree-Law No. 129/2012, of 22 June, shall read as follows:

“Article 3

[...]

1 - The mission of *Turismo de Portugal, I. P.*, is to support tourism sector investment, enhance and develop tourism infrastructures, coordinate the promotion of Portugal as a tourist destination at home and abroad, and develop human resources training in the sector, as well as to monitor, inspect and regulate the operating of and engagement in land-based games of chance (land-based gambling), and games of chance, fixed-odds sport bets, and totalisator/paris mutuel and fixed-odds horse racing bets, when carried out in remotely, through electronics, IT, telematics and interactive media, or by any other means (online gambling and betting).

2 - [...]:

a) [...];

b) [...];

c) [...];

d) [...];

e) [...];

f) [...];

g) [...];

h) [...];

i) [...];

j) [...];

k) [Formerly indent n)];

l) to assist the government in defining the national

policy on the regulation of the land-based gambling and online gambling and betting sector, issuing opinions, studies and information;

m) [Revoked];

n) to cooperate in drafting legal instruments for the land-based gambling and online gambling and betting sector, as well as to propose the adoption of legislative and regulatory measures within the framework of its powers;

o) to monitor, inspect and regulate the operating and engagement in land-based games of chance, as well as the operating of casinos, bingo rooms and other locations where the operating of such games may be authorised in the future;

p) to monitor, inspect and regulate the operating of and engagement in online gambling and betting;

q) to manage, in the name and on behalf of the State, the gambling concession contracts, and monitor the performance thereof, when express provision for the intervention of the member of government responsible for tourism is not made, without prejudice to the possibility of sub-delegation.

3 - The duties of *Turismo de Portugal, I.P.*, with regard to monitoring, inspecting and regulating land-based gambling and online gambling and betting, shall be performed by the gambling commission and the *Serviço de Regulação e Inspeção de Jogos*.

#### Article 5

[...]

1 - [...].

2 - [...].

3 - [...].

4 - The powers of the management board vis-à-vis the *Serviço de Regulação e Inspeção de Jogos* shall be delegated to the gambling commission.

5 - [...].

#### Article 7

[...]

1 - The gambling commission is the body responsible for steering, monitoring and supervising the activity of the *Serviço de Regulação e Inspeção de Jogos*, and shall assure the connection with the management board of *Turismo de Portugal, I.P.*

2 - [...]:

a) [...];

b) [...];

c) the director of the *Serviço de Regulação e Inspeção de Jogos*.

3 - Without prejudice to the powers conferred by law or delegated or sub-delegated to it, the gambling commission shall have monitoring, inspection, regulatory and punitive powers, and shall be responsible, with the possibility of delegation, for, *inter alia*:

a) granting, issuing, extending, suspending and revoking online gambling and betting operating licences;

b) issuing regulations;

c) setting time limits for compliance with obligations arising from the law, concession contracts or licences for the operating of online gambling and betting, when these are not expressly fixed;

d) giving its opinions on the layout plans and projects for infrastructure construction and other equipment which constitute legal or contractual obligations for the concessionaires;

e) exercising the powers and competences attributed to the State, by law or by contract, unless these make express provision for the intervention of the member of government responsible for tourism, engaging in a judicious and effective management which ensures that the relevant public interests are safeguarded;

f) ruling on administrative and administrative offence proceedings, including those relating to gambling and betting advertising, in accordance with the Advertising Code, approved by Decree-Law No. 330/90, of 23 October, imposing the relevant fines, penalties and other penalty measures provided for by law and adopting the precautionary measures which prove to be necessary;

g) deliberating on the implementation of the measures necessary for the smooth course of the penalty proceedings, including search and seizure measures, without prejudice to the decision of the competent judicial authority;

h) approving codes of conduct and best practice handbooks for land-based gambling and online gambling and betting, at the proposal of the *Serviço de Regulação e Inspeção de Jogos*;

i) monitoring and assessing the activity carried on by the *Serviço de Regulação e Inspeção de Jogos*, including fostering a rational use of the available resources;

j) approving the *Serviço de Regulação e Inspeção de Jogos* plans, including the plan of activities and the timing of its implementation, as well as the relevant reports, in particular, the activities report;

k) preparing the annual budget of the *Serviço de Regulação e Inspeção de Jogos* and assuring the execution thereof;

l) authorising the expenses necessary for the functioning of the *Serviço de Regulação e Inspeção de Jogos*;

m) defining the general rules and principles applicable to the operating of and engagement in land-based gambling and online gambling and betting, in compliance with the legal, regulatory and contractual framework in force;

n) approving the rules of execution of land-basing gambling and online gambling and betting;

o) approving the list containing the sports, competitions, sports events and horse races on which bets may be placed and defining the types and times of the bets, as well as the kinds of results on which these may be placed;

p) setting the amount of the security deposits due from online gambling and betting concessionaires and operators;

q) issuing a written opinion on the preparatory items for the formation of land-based gambling concession contracts or on amendments made to the contracts in force;

r) officially approving the online gambling and betting technical systems;

s) ordering audits, surveys, inquiries or other investigations to be conducted into the management and operating of the concessionaires and operators, including their economic, financial or tax position with regard to special gambling taxes;

t) imposing preventive and precautionary measures banning access to the game rooms or locations authorised to hold land-based gambling activities;

u) authorising the acquisition, charging or lease of assets and services, in accordance with the law.

4 - The gambling commission shall also have jurisdiction in all matters which, under this decree-law and the other applicable legislation, are not allocated to another body.

5 - [Formerly clause 4].

#### Article 9

[...]

1 - Without prejudice to the following clause, *Turismo de Portugal, I.P.*, shall be organised internally as set out in its statutes.

2 - The *Serviço de Regulação e Inspeção de Jogos* is an inspection body, equipped with technical and operational autonomy and public authority powers, and it is incumbent on it, *inter alia*, without prejudice to the powers conferred by law or delegated or sub-delegated to it, to:

a) issue instructions and guidelines, of a binding nature;

b) provide technical support to and cooperate with the police authorities, including the Public Safety Police (PSP), the National Republican Guard (GNR), the

Criminal Investigation Force (PJ) and the Food and Economic Safety Authority (ASAE), with regard to the prevention and punishment of illegal practices relating to land-based games of chance;

c) develop administrative cooperation mechanisms with the relevant authorities and departments, including, *inter alia*, with the Bank of Portugal (BdP), the ERC – Media Regulatory Body (ERC), the ICP – National Communications Authority (ICP-ANACOM) and the Food and Veterinary Directorate General (DGAV), with regard to the prevention and punishment of illegal online gambling and betting practices;

d) initiate and manage administrative procedures and administrative offence proceedings, including those relating to the advertising of gambling and betting as provided for in the Advertising Code, approved by Decree-Law No. 330/90, of 23 October;

e) issue recommendations;

f) collect and manage the revenue earmarked for funding the pursuit of the activity of monitoring, inspecting and regulating land-based gambling and online gambling and betting;

g) set the amounts of consideration, fees and taxes payable in respect of the pursuit of the activity of operating land-based gambling and online gambling and betting, as well as the fines, penalties, costs of proceedings and compulsory pecuniary penalties imposed in this respect;

h) approve the materials and instruments intended for land-based gambling, with a view to their conformity with the rules in force;

i) ensure the creation and management of databases with up-to-date information about the persons who, voluntarily or under an administrative or judicial decision, are banned from gambling.

#### Article 11

[...]

1 - [...].

2 - [...]:

a) Revenue from special gambling taxes and from gambling area concessions;

b) [...];

c) [...];

d) [...];

e) [...];

f) [...];

g) [...];

h) [...];

i) [...];

j) [...];

k) [...];

l) [...];

m) [...].

3 - [...].

4 - Of the revenue referred to in clause 2, the following shall be allocated to defraying the costs involved in the pursuit of the activity of monitoring, inspecting and regulating land-based gambling and online gambling and betting, apart from those referred to in Article 13:

a) revenue from special gambling taxes which, under the relevant legal instruments, are allocated to them;

b) revenue from the issue of licences for operating online gambling and betting;

c) proceeds from the fees payable for services provided within the scope of these powers;

d) proceeds from the fines, penalties, procedural fees and compulsory pecuniary penalties imposed in administrative and administrative offence proceedings relating to the operating of and engagement in land-based gambling and online gambling and betting;

e) proceeds from other pecuniary sums which are allocated to them.

#### Article 13

[...]

1 - The costs involved in conducting inspections in casinos and bingo rooms and in combating illegal land-based games of chance, stemming from the operations of the *Serviço de Regulação e Inspeção de Jogos* and the activities conducted by ASAE in this field, shall be defrayed with the revenue from:

a) [...];

b) [...].

2 - [...].

3 - [...].

4 - [...].

5 - [...].

6 - [...].

7 - *Turismo de Portugal, I.P.*, shall transfer each year to ASAE from the sum referred to in the preceding clause the amount necessary to defray the costs stemming from this authority's participation in the fight against illegal land-based games of chance, which may not exceed 50% of the operating costs of the *Serviço de Regulação e Inspeção de Jogos*.

#### Article 16

[...]

1 - A non-payment certificate issued by the management board of *Turismo de Portugal, I.P.*, shall constitute an enforceable document, under Article 703(1)(d) of the Civil Procedure Code.

2 - A non-payment certificate issued by the gambling commission of *Turismo de Portugal, I.P.*, shall constitute an enforceable document, under Article 162(d) of the Tax Procedure Code.

#### Article 19

[...]

1 - *Turismo de Portugal, I.P.*, within the scope of its activity of monitoring, inspecting and regulating land-based gambling and online gambling and betting, carried on through the gambling commission and the *Serviço de Regulação e Inspeção de Jogos*, shall have the powers and prerogatives of an administrative public authority and regulatory body.

2 - [...].

3 - [...].

#### Article 20

[...]

1 - [...].

2 - With regard to monitoring, inspecting and regulating land-based gambling and online gambling and betting, *Turismo de Portugal, I.P.*, through the gambling commission and the *Serviço de Regulação e Inspeção de Jogos*, may also set up cooperation mechanisms with other public or private bodies, whether national or foreign, when this proves to be necessary and expedient for the performance of its duties, and cooperate with the regulatory bodies of other Member States and with the relevant European and international bodies, from an international administrative cooperation perspective.

3 - Within the scope of its monitoring, inspection and regulatory duties in relation to land-based gambling and online gambling and betting, *Turismo de Portugal, I.P.*, may, at the proposal of the gambling commission, enter into protocols for the purposes set out in the preceding clause as well as with public bodies which are database holders, in compliance with the personal data protection legislation, with a view to confirming identification details, *inter alia*, the name, date of birth and tax number of the individuals who register on the websites of the online gambling and betting operators.

#### Article 22

[...]

1 - The director of the *Serviço de Regulação e Inspeção de Jogos* shall maintain the remuneratory status in effect as at the date of entry into force of this instrument

until the review of the career development of a Senior Gambling Inspector under Decree-Law No. 170/2009, of 3 August.

2 - [...]”

#### Article 6

##### Reassessment

Within a maximum period of two years of the date of issue of the first licence granted under the Legal Framework for Online Gambling and Betting, the monitoring, inspection and regulatory body shall conduct a reassessment of this framework, as well as of the relevant monitoring, inspection and regulatory model, relaying it to the member of government responsible for tourism.

#### Article 7

##### Transitory provisions

1 - The entities which are currently authorised to operate in Portugal the State lotteries and games of chance in the casinos, are qualified to apply for licences to operate online gambling and betting, as it is considered that they meet the requirements for good standing, technical capacity and economic and financial capacity.

2 - The entities which seek to benefit from the preceding clause shall submit the relevant application to the monitoring, inspection and regulatory body, within a maximum period of 90 consecutive days of the date of entry into force of this decree-law.

3 - The submission of the application to obtain a licence for operating online gambling and betting shall not imply any waiver of compliance with the other conditions and obligations set out in Schedule I hereto, including the payment of the fees owed, the provision of security deposits and the certification of the gambling technical system.

4 - Without prejudice to clause 1, the entities referred to therein may also set up a limited liability company (*sociedade anónima*) solely for the purposes of operating gambling and betting, and this company will then reap the benefit of that clause, provided that, during the licence validity period, the entities in question have a majority holding in the capital or hold more than half the votes and may appoint more than half the members of the board of directors.

#### Article 8

##### Revocation

Article 3(2)(m) of Decree-Law 129/2012, of 22 June, is hereby revoked.

#### Article 9

##### Republication

Decree-Law 129/2012, of 22 June, as amended, is republication in Schedule II hereto and is an integral part hereof.

#### Article 10

##### Entry into force

This decree-law shall come into force 60 days after its publication date.

Seen and approved in the Council of Ministers of 26 February 2015. — *Pedro Passos Coelho* — *Maria Luísa Casanova Morgado Dias de Albuquerque* — *Anabela Maria Pinto de Miranda Rodrigues* — *Luís Maria de Barros Serra Marques Guedes* — *Luís Miguel Poiares Pessoa Maduro* — *António de Magalhães Pires de Lima* — *José Diogo Santiago de Albuquerque* — *Paulo José de Ribeiro Moita de Macedo* — *Nuno Paulo de Sousa Arrobas Crato* — *Luís Pedro Russo da Mota Soares*.

Promulgated on 23 April 2015.

For publication.

The President of the Republic, ANÍBAL CAVACO SILVA.

Signed on 24 April 2015.

The Prime Minister, *Pedro Passos Coelho*

#### SCHEDULE I

(to which Article 2 refers)

Legal Framework for Online Gambling and Betting

#### CHAPTER I

#### General provisions

#### Article 1

##### Subject-matter

The Legal Framework for Online Gambling and Betting (hereinafter referred to as “RJO”) regulates the operating of and engagement in games of chance, fixed-odds sport bets and totalisator/paris mutual and fixed-odds horse racing bets, when engaged in remotely, through electronic, IT, telematics and interactive media, or by any other means (online gambling and betting).

#### Article 2

##### Objective scope

1 - The RJO applies to the operating of and engagement in online gambling and betting.

2 - The following are excluded from the scope of application of the RJO:

a) gambling and betting through terminals used exclusively for offering gambling or taking bets and placed in locations which, in accordance with the law, have been specifically authorised for the purpose;

b) the *Lotaria Nacional* (National Lottery), approved

by Decree-Law No. 40 397, of 24 November 1955, as amended by Decree-Law Nos. 43 399, of 15 December 1960, and 120/75, of 10 March, and by Decree-Law No. 479/77, of 15 November, as amended by Decree-Law Nos. 11/88, of 15 January, 96/91, of 26 February, and 200/2009, of 27 August;

c) totalisator/paris mutual betting contests, approved by Decree-Law No. 84/85, of 28 March;

d) the *Joker* raffle, approved by Decree-Law No. 412/93, of 21 December, as amended by Decree-Law Nos. 225/98, of 17 July, 153/2009, of 2 July, and 200/2009, of 27 August;

e) the *Lotaria Instantânea* (Instant Lottery), approved by Decree-Law No. 314/94, of 23 December;

f) the *Totogolo* (Football Pools), approved by Decree-Law No. 225/98, of 17 July;

g) Euromilhões (EuroMillions), approved by Decree-Law No. 210/2004, of 20 August, as amended by Decree-Law No. 44/2011, of 24 March;

h) Social State–run games, regulated by Decree-Law No. 282/2003, of 8 November;

i) land-based fixed-odds sports bets, approved by Decree-Law No. [Registered as Decree-Law No. 84/2015];

j) land-based totalisator/paris mutual horse racing bets, approved by Decree-Law No. [Registered as Decree-Law No. 112/2015];

k) land-based games of chance operated in casinos, or outside of them, in the geographical gambling areas established under Decree-Law No. 422/89, of 2 December, as amended by Decree-Law No. 10/95, of 19 January, by Law No. 28/2004, of 16 July, by Decree-Law No. 40/2005, of 17 February, by Law No. 64-A/2008, of 31 December, and by Decree-Law No. 114/2011, of 30 November;

l) bingo, regulated by Decree-Law No. 31/2011, of 4 March, as amended by Decree-Law No. [Reg. DL 85/2015].

3 - When made available remotely, through electronic, computer, telematics and interactive media, or by any other means, games of chance, fixed-odds sports betting and totalisator/paris mutual and fixed-odds horse race betting, are regulated exclusively by the RJO.

### Article 3

#### **Territorial scope**

The RJO applies to the entire national territory.

### Article 4

#### **Definitions**

For the purposes of the RJO, the following terms and

expressions shall mean:

a) “fixed-odds bet” is where the person placing the bet gambles against the operator, who is the organiser of the bet, based on a value equal to or greater than 1.00 (odds), up to two decimal places, pre-defined or defined by agreement, which value is associated with each one of the possible outcomes for each bet according to the likelihood of a given kind of result occurring, with the prize being the product from multiplying the winning stake by the corresponding value, or where gamblers bet against each other, with the prize being the product from multiplying the winning stake by the set coefficient, minus the fee set in advance by the operator;

b) “sports bet” is where the sum of money placed as a bet is associated with a prediction as to a certain kind of result in a previously-identified competition or sports event, the outcome of which is uncertain and is not dependent on the will of the participants;

c) “horse racing bet” is where the sum of money placed as a bet is associated with a prediction as to a certain kind of result in a horse race or competition, the outcome of which is uncertain and is not dependent on the will of the participants;

d) “totalisator/paris mutual bet” is where a percentage of the total amount of stakes is reserved for prizes to be distributed among those who correctly guessed the kind of result to which the bet referred, with the remainder reverting to the operator who organises the bet;

e) “player account” means the account associated with the registration of each player, where all the online gambling activity transactions are credited and debited;

f) “payment account” means an account opened with a payment service provider, within the meaning of Article 2(a) of Decree-Law No. 317/2009, of 30 October, as amended by Decree-Law Nos. 242/2012, of 7 November, and 157/2014, of 24 October;

g) “operator” means an entity which holds one or more licences;

h) “event” means the sporting event or horse race;

i) “random number generator” means the software or hardware component which, guaranteeing randomness, generates the numerical results which are used by the operator to determine the outcome of games of chance;

j) “control infrastructure”, means the technical infrastructure, managed by the monitoring, inspection and regulatory body, for the storage and processing of data related to the online gambling and betting activity, routed through the reporting front-end infrastructure;

k) “reporting front-end”, means the technical infrastructure managed by the operator, where all the operations and transactions between the player and the



gambling platform should be forwarded and where all the gambling activities shall be redirected with a view to their recording and reporting to the control infrastructure”;;

l) “player” means any person of legal age who takes part in online gambling and betting;

m) “land-based gambling and betting” means gambling or betting carried out in casinos, bingo rooms or other locations previously authorised for the purpose and which require the physical presence of the player;

n) “game of chance” means a game which implies the expenditure of a sum of money and the outcome of which is contingent as it is based solely and fundamentally on chance;

o) “online gambling and betting” means the games of chance, fixed-odds sports bets, totalisator/paris mutual or fixed-odds horse racing bets, in which any devices, equipment or systems are used which enable documents, data and information to be produced, stored or transmitted, when carried out remotely, through electronic, computer, telematics and interactive media, or any other means;

p) “licence” means the title granting the holder the right to operate a given category of online gambling or betting; “bet time” means the period of time elapsing between the beginning and the end of the bet acceptance period, termed as “pre-event bets” if made at the latest by the beginning of the event or events to which they refer, or as “direct bets” if made during the course of the event or events;

q) “non-repudiation” means the guarantee that any of the parties involved in the online gambling and betting activity may not deny the fact that, on a specific date and time, a given operation occurred, including access to given information or to the making of a communication or electronic transaction;

r) “gambling platform” means the technical infrastructure, managed by the operator, where the online gambling and betting activity is carried on, which includes the databases, the gambling software, the random number generator, the management models and all the other hardware and software on which the operating of this activity is based;

s) “intermediary network services providers” means those that provide the technical services for access, availability and use of online gambling and betting services, including the internet access service, the storage service, whether hosting, caching or any other, and the network content association service, by means of search instruments, hyperlinks or similar processes;

t) “gross revenue” means the amount deriving from the deduction of the sum awarded as prizes from the total amount of bets placed;

u) “player registration”, means the single registration which enables the player to access the operator’s gambling platform and where the data which enables the

player to be identified and makes it possible for transactions to be conducted between the latter and the operator is gathered;

v) “gambling technical system” means the set of hardware and software, managed by the operator, which includes the website, the reporting front-end and the gambling platform;

w) “website”, means the internet website through which the player connects with the operator in online gambling and betting activity;

x) “gambling software” means the applications responsible for the dynamics, rules and logic of online gambling and betting ;

y) “type results ” means the question underlying the sports bet or the horse racing bet regarding one or more facts which occur over the course of a given period of time of one or more events.

## Article 5

### Categories and types of authorised online gambling and betting

1 - The online gambling and betting categories, the operating of which is authorised, are as follows:

a) Fixed-odds sports bets;

b) Totalisator/paris mutual or fixed-odds horse racing bets;

c) Games of chance, including the following types;

i) Baccarat punto banca/ baccarat punto banca Macau;

ii) French banque;

iii) Blackjack/21;

iv) Bingo;

v) Slot machines comprising three or more rotating reels, with symbols or other graphic representations, which gradually come to a stop on the line or lines of play, with the goal of forming combinations of symbols;

vi) Poker in tournament mode;

vii) Non-banking poker, of the variants “omaha”, “hold’em” and “synthetic poker”;

viii) Caribbean stud poker;

ix) American roulette;

x) French roulette.

2 - The operating of new types of games of chance, which are not provided for in indent c) of the preceding clause, may be authorised by the monitoring, inspection and regulatory body, in accordance with Article 12(2) to (4).

3 - The rules of execution for fixed-odds sports bets, totalisator/paris mutual and fixed-odds horse racing bets and games of chance shall be laid down in a regulation of

the monitoring, inspection and regulatory body.

4 - Unregulated operating of and engagement in online gambling and betting is prohibited.

5 - Fixed-odds sports bets and totalisator/paris mutual and fixed-odds horse racing bets may be placed, respectively, on the sports, competitions and sports events and on the horse races and competitions contained in the list drawn up and approved by the monitoring, inspection and regulatory body.

6 - The inclusion, in the list referred to in the preceding clause, of sports, competitions, and sports events organised by national entities shall be preceded, for each sport, by a hearing of the relevant federation of recognised public interest, in particular, to verify the good standing of the competition and its organiser.

7 - The national horse races and competitions to be included on the list provided for in clause 5 shall be those contained in the calendar approved for the purpose by the Food and Veterinary Directorate General.

8 - In the case of fixed-odds sport bets and totalisator/paris mutual and fixed-odds horse racing bets, the types and times of the bets, as well as the kind of results on which these are placed, shall be fixed, respectively, for each sport, competition and sports event and for each horse race and competition, and shall be contained in the list provided for in clause 5.

9 - The monitoring, inspection and regulatory body may alter the list provided for in clause 5 and the operator shall not be entitled to indemnity or compensation in respect of such an alteration.

## CHAPTER II

### **Prohibitions and responsible gambling policy**

#### Article 6

##### **Prohibitions**

Engaging in online gambling and betting, whether directly or through another, is prohibited for:

*a)* members of the sovereign bodies and the representatives of the Republic for the Autonomous Regions;

*b)* members of the government bodies of the Autonomous Regions;

*c)* public prosecutors, police authorities, security forces and their agents;

*d)* minors and persons declared as unfit under the civil law;

*e)* anyone who is, voluntarily or under a court decision, banned from gambling;

*f)* members of the company bodies of the operators, in relation to the website of the same;

*g)* employees of the operators, in relation to the website of the same;

*h)* anyone who has or may have access to the IT systems of the online gambling and betting of a given website;

*i)* any persons, such as sports managers, technical sports personnel, trainers, sportspeople, whether professional or amateur, judges, referees, sports entrepreneurs and those in charge of the bodies organising the competitions and sports events and horse races and competitions on which bets may be placed when, directly or indirectly, they may or could intervene in the outcome of the events;

*j)* the employees of the monitoring, inspection and regulatory body who exercise these powers, without prejudice to Article 47(4).

#### Article 7

##### **Responsible gambling policy**

1 - In online gambling and betting operations, the integrity, reliability and security of such operations shall be safeguarded and awareness of the complexity of this activity shall be assured and, in addition, the holding of preventive awareness-raising and information activities, the drafting of codes of conduct and the dissemination of good practices shall be fostered.

2 - For the purposes of the preceding clause, the operators shall, before commencing operations, draw up a plan and adopt measures which ensure responsible gambling and provide the public, particularly the players, the necessary information, fostering moderate, non-compulsive and responsible attitudes.

3 - The following matters, among others, shall be envisaged in the drawing-up of the plan referred to in the preceding clause:

*a)* general policy of information about the operator and the online gambling and betting it offers and the way in which this is made available to the public and to the players;

*b)* policy of information and communication to the player about responsible gambling behaviour and the dangers of dependence on and addiction to gambling, which includes a permanent message about responsible gambling on the website;

*c)* measures adopted by the operator which seek to protect minors, incapacitated persons and those who are voluntarily banned from gambling and preventing the access of such persons to online gambling and betting;

*d)* mechanisms made available on the website which permit the players to limit the amounts deposited in their account and the bets placed;

*e)* self-exclusion mechanisms, the way in which these

are publicised on the website, and how to access them;

f) complaint mechanisms accessible to the player, the way in which these are publicised on the website, and how to access them;

g) timing of the game or of the bet, in cases where this is applicable.

4 - The monitoring, inspection and regulatory body may issue regulations, instructions or guidelines for the development and implementation of the principles set out in the preceding clauses.

5 - The monitoring, inspection and regulatory body shall foster, in liaison with the competent entities, the holding of studies aimed at identifying addictive behaviour and propose the adoption of preventive and deterrent measures.

### CHAPTER III

#### **Operating of and engagement in online gambling and betting**

##### SECTION I

#### **Online gambling and betting operating and licensing framework**

##### Article 8

##### **Operating right**

The right to operate online gambling and betting is reserved to the State.

##### Article 9

##### **Awarding the operating of online gambling and betting**

1 - The operating of online gambling and betting shall be awarded by the monitoring, inspection and regulatory body, by means of a licence, to private undertakings, incorporated in the form of a limited liability company (*sociedade anónima*) or equivalent, which has its registered office in a European Union Member State, or in a State which is a signatory of the European Economic Area Agreement which is bound to administrative cooperation in the field of tax and in combating fraud and money laundering, provided that, in the case of foreign companies, they have a branch in Portugal.

2 - The operating of online gambling and betting may only be awarded to undertakings with a company object which includes, at all times during the term of the license, the operating of gambling and betting.

3 - The operating of online gambling and betting by operators recognised in other European Union Member States shall be conditional on the grant of a licence by the monitoring, inspection and regulatory body, and licenses or other qualifying instruments granted by other States shall not be valid in Portugal.

##### Article 10

##### **Nature of the operators**

The operators shall be considered non-financial entities for the purpose of bringing them under Law No. 25/2008, of 5 June, as amended by Decree-Law Nos. 317/2009, of 30 October, 242/2012, of 7 November, 18/2013, of 6 February, and 157/2014, of 24 October.

##### Article 11

##### **Licence procedure**

1 - The licence application shall be submitted on the standard form approved by the monitoring, inspection and regulatory body, by the legally admissible means, preferably electronically, duly accompanied by the documents required for the form in question.

2 - The licence application and the accompanying documents shall be in the Portuguese language.

3 - When, owing to their nature or origin, the documents submitted are in a foreign language, these shall be accompanied by a duly-legalised translation into Portuguese.

4 - The monitoring, inspection and regulatory body may, at the request of the applicant, permit the documents not to be accompanied by a duly-legalised translation into Portuguese.

5 - If the licence application contains omissions or defects which may be remedied or corrected, or when there are irregularities or shortcomings in the required accompanying documents, the applicant shall be notified to make the necessary corrections or submit the missing documents within a period of ten days, under penalty of denial or partial denial of the request.

6 - The draft of the final decision, when unfavourable in whole or in part, shall be notified to the applicant for the purposes of a prior hearing pursuant to the Administrative Procedure Code (CPA).

7 - The final decision shall be notified to the applicant and, if favourable, shall indicate the elements necessary for compliance with the conditions for the issue of the licence.

##### Article 12

##### **Granting licences**

1 - Licences may be granted for the online operating of:

- a) fixed-odds sports betting;
- b) totalisator/paris mutual and fixed-odds horse racing bets;
- c) bingo;
- d) the games of chance referred to in sub-indent *i*) to *iii*) and *v*) to *x*) of indent *c*) of Article 5(1).

2 - During the term of the licence referred to in indent *d)* of the preceding clause, the licence holder may request authorisation from the monitoring, inspection and regulatory body to operate new types of games, besides those referred to therein.

3 - Only the operating of new types of games with rules of execution which have already been defined in a regulation of the monitoring, inspection and regulatory body may be authorised.

4 - The authorisation for operating new types of games shall be endorsed on the licence, after the proper certification and official approval of the gambling technical system.

### Article 13

#### Conditions for granting licences

The grant of licences for operating online gambling and betting shall be dependent on the following cumulative conditions being met by the applicant:

*a)* having its social security affairs in order in Portugal or, as the case may be, in the State in which its main establishment is located;

*b)* having its tax affairs in order in Portugal or, as the case may be, in the State in which its main establishment is located;

*c)* be of good standing and have technical capacity and economic and financial capacity;

*d)* submit a structuring plan of the gambling technical system which, incorporating best practices in software architecture and technology, contains the following, among others:

*i)* the document describing the gambling technical system, envisaging the relevant requirements and indicating the geographical address of the location where the gambling platform will be hosted;

*ii)* the geographical address of the location, in the national territory, where the front end recording infrastructure will be hosted and, where applicable, the identification of the intermediary network service provider responsible for the main storage;

*iii)* the identification of the categories and types of online gambling and betting to be operated;

*iv)* the mechanisms for player self-exclusion and for preventing the registration of players banned from gambling;

*v)* the resources which enable bans on gambling to be made effective;

*vi)* the betting limits, as well as the resources which enable the player to impose limits on the bets placed and on the amounts deposited in the player account;

*vii)* the timing of the gambling or betting, where

applicable;

*viii)* the permitted payment methods and the rules for calculating and paying prizes;

*ix)* the way in which all the transactions in the player account are made and how transactions which involve transfers of funds between the operator and the player are processed;

*x)* the information security mechanisms adopted, in order to guarantee the security of the gambling technical system and its data.

### Article 14

#### Good standing

1 - Any undertakings and the legal representatives of such undertakings that have been declared insolvent or bankrupt by a court, are in the process of liquidation, dissolution or cessation of activity, are subject to any measure preventing the liquidation of assets or any analogous situation, or have such a process pending, and when they are covered by an insolvency, recovery or special revitalisation plan under the legislation in force, shall not be deemed of good standing.

2 - Undertakings and the legal representatives of undertakings that have been prohibited from doing business shall also be deemed, for so long as the prohibition is in effect, as not of good standing.

3 - Undertakings and the legal representatives of undertakings that have had two final sentencing decisions against them for serious or very serious administrative offences committed with intent, as set out in the RJO, may be deemed as not of good standing.

4 - Undertakings and the legal representatives of undertakings that have been convicted in a *res judicata* decision, of the commission of any one of the following crimes, shall be deemed as not of good standing:

*a)* those set out in Law No. 109/2009, of 15 September;

*b)* fraud or computer fraud;

*c)* wilful or negligent insolvency;

*d)* promotion, organisation or illegal operating of games of chance or State-run games, including for breach of exclusivity allocated or granted by the State;

*e)* falsification or counterfeiting of documents, when committed within the scope of the activity of operating land-based gambling and betting or online gambling and betting;

*f)* contempt, when committed within the scope of the activity of operating land-based gambling and betting or online gambling and betting;

*g)* illegal operating and fraud in land-based gambling and betting or online gambling and betting and, in

addition, the offences set out in Decree-Law No. 422/89, of 2 December, as amended by Decree-Law No. 10/95, of 19 January, by Law No. 28/2004, of 16 July, by Decree-Law No. 40/2005, of 17 February, by Law No. 64-A/2008, of 31 December, and by Decree-Law No. 114/2011, of 30 November;

h) corruption;

i) fraudulently obtaining a subsidy or grant, misuse of a grant, subsidy or subsidised loan, fraudulently obtaining credit and offending against economic reputation;

j) counterfeiting or imitation and illegal use of trademark, when committed within the scope of the activity of operating land-based gambling and betting or online gambling and betting;

k) money laundering.

5 - For the purposes of clauses 3 and 4, the convictions of any individual, whether in his personal capacity or in the capacity of legal representative of an undertaking, and the convictions of an undertaking of which such a person has been a legal representative, shall be taken into consideration.

6 - In order to ascertain good standing as regards the convictions referred to in clauses 3 and 4, only *res judicata* decisions of less than five years previously are of relevance.

7 - A conviction for the commission of one of the crimes set out in clause 4 shall not affect the good standing of all those who have been rehabilitated, in accordance with Articles 15 and 16 of Law No. 57/98, of 18 August, as amended by Decree-Law No. 323/2001, of 17 December, and by Law Nos. 113/2009, of 17 September, 114/2009, of 22 September, and 115/2009, of 12 October, or prevent the monitoring, inspection and regulatory body from reasonably considering that the conditions for good standing have been met, taking into account, *inter alia*, the time elapsed since the commission of the facts.

8 - Undertakings and the legal representatives of undertakings shall cease to be considered of good standing as from the time they fall within any of the situations indicated in clauses 1, 2 and 4.

9 - Undertakings and the legal representatives of undertakings that fall within the situation indicated in clause 3 may cease to be considered of good standing, as well as any undertakings whose legal representatives are deemed as not of good standing pursuant to this article, when, in the latter case, the representatives in question are not replaced within a maximum period of 30 days of the date on which they became aware of the fact which brought about the loss of good standing.

10 - Only persons whose good standing and availability provide guarantees for a sound and prudent management may be members of an operator's administrative and management bodies.

11 - In assessing the good standing and availability referred to in the preceding clause, the monitoring, inspection and regulatory body shall take into account the way in which the person usually conducts business or carries on his profession, especially in aspects which reveal an inability to decide in a considered and judicious manner or a tendency not to perform his obligations in a timely fashion or to conduct himself in a manner incompatible with preserving market confidence.

12 - Whenever the monitoring, inspection and regulatory body deems that there is a lack of good standing, it shall justify, in a reasoned manner, the circumstances of fact and of law on which its decision is based.

## Article 15

### Technical capacity

1 - The applicant shall demonstrate to the monitoring, inspection and regulatory body the necessary technical capacity, including through human resources that are qualified or experienced in the different types of technology used by the gambling technical system.

2 - For the purposes of demonstrating technical capacity, technical staff shall only be considered as for one single operator, even though they may provide services to other operators.

## Article 16

### Economic and financial capacity

1 - The applicant shall demonstrate economic and financial capacity assessed by means of a financial autonomy indicator, demonstrated by an equity-to-total-net assets ratio, calculated from the balance sheet for the last financial year, using the following formula:

$$\text{financial autonomy} = E/NA \times 100$$

where:

- equity (E), is equivalent to the sum of the paid-up capital, minus shares, with reserves, retained earnings and adjustments of financial assets;

- net assets (AL), is equivalent to the assets recognised in accordance with the applicable accounting standard.

2 - For the purposes of the preceding clause, the ratio shall be equal to or greater than 35% and the monitoring, inspection and regulatory body may set, by means of a regulation, a different percentage.

3 - Compliance with the requirement set out in clause 1 shall be demonstrated by means of the written opinion of the supervisory committee, the sole supervisor or statutory auditor.

4 - The written opinion referred to in the preceding clause shall be considered sufficient in cases where the applicant, because of the date on which it was incorporated, does not as yet have a balance sheet.

## Article 17

### Issuing the licence

1 - The licence shall be issued electronically by the monitoring, inspection and regulatory body and shall also be made available on its website.

2 - The issue of a licence depends on the following cumulative conditions being met:

*a)* certification and official approval of the gambling technical system, pursuant to Article 35;

*b)* compliance, within a period of not less than ten days fixed for the purpose by the monitoring, inspection and regulatory body, with the following conditions:

- i)* delivery of the security deposits owed;
- ii)* payment of any fines payable under the RJO;
- iii)* payment of the licence issue fee.

## Article 18

### Security deposits

1 - Within the time limit established under indent *b)* of clause 2 of the preceding article, the applicant shall provide, to the order of the monitoring, inspection and regulatory body:

*a)* a security deposit of €500,000, as collateral for the performance of its legal obligations, including the payment of the estimated balances of the player accounts and any fines which may be imposed under the RJO;

*b)* a security deposit of €100,000, as collateral for the payment of the special online gambling tax (IEJO).

2 - The security deposits provided for in the preceding clause shall be in line with the models defined by the monitoring, inspection and regulatory body and shall be provided by means of a bank deposit or a suitable independent bank guarantee which can be mobilised in terms equivalent to the former.

3 - The security deposits provided shall be reviewed by the monitoring, inspection and regulatory body after six months have elapsed since the beginning of operations and whenever necessary, so as to be equivalent to:

*a)* a percentage of between 60% and 90% of the average six-monthly balance of the player accounts, in the case of the security deposit provided for in indent *a)* of clause 1;

*b)* the amount equivalent to the average IEJO for a two-month period, in the case of the security deposit provided for in indent *b)* of clause 1.

4 - In the event of a breach of the secured obligations, including failure to pay the IEJO, the monitoring, inspection and regulatory body shall be entitled to use or activate the corresponding security deposit.

5 - The security deposit provided as collateral for the payment of the IEJO constitutes a guarantee for the satisfaction of the pecuniary obligations undertaken and, if executed at the time of the breach, shall extinguish the obligation if the obligation in question is of an equal or lower value.

6 - The security deposit provided as collateral for the IEJO may not be activated to suspend the course of tax enforcement proceedings.

7 - Security deposits which have been used or activated or which, for whatever reason, prove to be insufficient, shall be increased by the operator within the time limit set for the purpose by the monitoring, inspection and regulatory body, of not less than 30 days.

## Article 19

### Licence content

The licence granted by the monitoring, inspection and regulatory body for operating online gambling and betting shall contain, *inter alia*, the following information:

*a)* the name, registered office, share capital and company number of the relevant holder;

*b)* the identification of the categories and types of online gambling and betting which may be operated;

*c)* the security deposits provided;

*d)* the licence term;

*e)* the conditions by which the operator is bound.

## Article 20

### Term and extension of the licence term

1 - The licence shall be valid for an initial term of three years from the date of issue.

2 - The licence term may be extended, at the request of the operator, for successive periods of three years.

3 - The licence term may only be extended if the following cumulative conditions are met:

*a)* the social security and tax affairs of the operator are in order;

*b)* the requirements of good standing, technical capacity and economic and financial capacity provided for in Articles 14 to 16 continue to be met;

*c)* the fee owed is paid;

*d)* there are no outstanding fines imposed under the RJO;

*e)* any order to increase the security deposits provided has been followed;

*f)* the operator has not exhibited significant or persistent shortcomings in the execution of an essential requirement in the course of the operating activity which

has led to its being convicted of a serious or very serious administrative offence.

4 - The request for the extension of the licence term shall be made 90 days before the end of the initial term or the current term.

5 - Article 11 shall apply, *mutatis mutandis*, to the request for an extension of the licence term.

6 - The extension of the licence term shall be endorsed on the licence.

## Article 21

### Transferring the licence

1 - The licence may only be transferred with the prior authorisation of the monitoring, inspection and regulatory body.

2 - For the purposes of the preceding clause, a licence transfer shall be deemed to exist in cases of a company restructuring which results in the transfer of the licence to another entity by means of a merger, split, entry of assets, among others, as well as in the case of a transfer, in any legal form, of a direct or indirect holding in the share capital of the operator whereby the acquirer will have a majority holding in the share capital of the former or hold over half of the votes or have the possibility of appointing more than half of the members of the board of directors.

## Article 22

### Expiry

The licence for the pursuit of the activity of operating online gambling and betting shall expire:

- a) at the end of its term, if not extended;
- b) if the operator is extinguished.

## Article 23

### Renovation and suspension of the licence

1 - Without prejudice to the imposition of the penalties which apply in each case, the online gambling and betting operating licence may be revoked by the monitoring, inspection and regulatory body in the following situations:

- a) when the licence has been obtained by means of false declarations or other illegal means;
- b) in cases where the operator falls within one of the situations referred to in Article 14;
- c) when the operator is found not to meet the requirements of Articles 15 and 16;
- d) when the licence is transferred without the prior authorisation of the monitoring, inspection and regulatory body;
- e) when there is a supervening breach of the gambling

technical system requirements;

f) when, in the situation provided for in Article 25(2), the gambling technical system fails to meet the requirements for official approval;

g) if the security deposits are not increased within the time limit set for the purpose by the monitoring, inspection and regulatory body;

h) when, in a two-year period, the operator is convicted, by final decision, of the commission of two very serious administrative offences or four serious administrative offences;

i) when the operator breaches, in a serious and reiterated manner, the legal or regulatory provisions aimed at preventing money laundering and the financing of terrorism;

j) when, for no justified reason, the operator fails to comply with the regulations, instructions or guidelines issued by the monitoring, inspection and regulatory body;

k) when the gravity or recurrence of the failure or failures evidences the operator's inability to operate the licensed activity properly.

2 - Whenever the occurrence of one of the situations set out in the preceding clause is not sufficiently serious to bring about the revocation of the licence, the monitoring, inspection and regulatory body may decide to suspend it, in accordance with the following clause.

3 - The act which orders the suspension of the licence shall stipulate the duration, the assumptions on which the cessation of the same depends, and the obligations of the operator during the suspension period.

4 - Decisions to revoke or suspend the licence shall be published on the website of the monitoring, inspection and regulatory body.

## SECTION II

### Pursuit of the online gambling and betting activity

#### SUBSECTION I

### General principles and provisions

#### Article 24

##### General principle

The activity related to the operating of online gambling and betting shall be carried on with every respect for personal dignity, the right to one's honour, the right to one's private life and image, and the right to property, as well as other legally-recognised rights.

#### Article 25

##### Commencement of activity

1 - The operators may only commence the operating of online gambling and betting:

- a) after the licence is issued;

b) after the endorsement on the licence of the types of games of chance provided for in the licence referred to in indent d) of Article 12(1) which were not covered by the certification and official approval of the gambling technical system, following a new certification and official approval pursuant to indent a) of Article 35(6);

c) after the endorsement on the licence of the authorisation for the operating of new games of chance, pursuant to Article 12(4), following new certification and official approval pursuant to indent b) of Article 35(6).

2 - In exceptional and duly reasoned cases, the monitoring, inspection and regulatory body may, at the request of an operator, issue new licences or make the endorsements provided for in indents b) and c) of the preceding clause before the official approval of the gambling technical system, provided that the remaining conditions prescribed by law for the purpose have been met.

## Article 26

### Obligations of the operators

1 - Without prejudice to compliance with the other obligations set out in the RJO and those which arise from the licence itself, the operators, in the pursuit of the activity of operating online gambling and betting, shall, *inter alia*:

a) pay the fees owed under the RJO;

b) install and maintain a gambling technical system for the operating of online gambling and betting, in accordance with the terms defined in the RJO;

c) redirect to the website all connections established from locations within Portugal or which use player accounts registered in Portugal, in accordance with Article 37;

d) set up the registration and account for each player, as set out in Articles 37 and 40 respectively;

e) establish a policy of awarding bonuses to players;

f) pay the players the announced amount of the prizes;

g) order the transfer of the balance of the player account to the payment account indicated in advance and held by the player, whenever the latter so requests;

h) have a bank account in a credit institution established in a European Union Member State, through which all the transactions relating to the online gambling and betting activity shall be conducted exclusively;

i) assure the integrity, availability, confidentiality and all the other security attributes of online gambling and betting, guaranteeing reliable and transparent gambling;

j) make available and provide information about the rules of online gambling and betting in a clear, true, full and up-to-date manner, including the payment methods

allowed, the minimum and maximum stakes, and the rules for calculating and paying prizes;

k) establish a privacy policy, which must be expressly accepted by the player, which identifies the minimum information requested, the purpose for which it is intended, and the conditions on which it may be disclosed;

l) appoint a manager responsible for operating the online gambling and betting who shall be responsible for liaising with the monitoring, inspection and regulatory body, in particular, providing all the information requested;

m) keep, in accordance with Article 43, online gambling and betting accounting records and ensure compliance with the current laws on the prevention of money laundering and the financing of terrorism;

n) develop and implement measures which prevent minors or other socially vulnerable groups from registering as players;

o) provide information about gambling bans;

p) convey to the monitoring, inspection and regulatory body the identity of the players who exclude themselves within a maximum period of 24 hours of the date of receipt of the communication in question;

q) draw up a plan and adopt the necessary measures for compliance with the principles of responsible gambling, as set out in Article 7 and in the regulations, instructions and guidelines issued by the monitoring, inspection and regulatory body in this respect;

r) cooperate in the fight against illegal gambling and associated unlawful activities, namely complying with the preventive provisions set down by law and denouncing practices or behaviours which are contrary to them;

s) communicate to the monitoring, inspection and regulatory body any change in the composition of their company bodies within a period of 10 days from the date thereof;

t) comply with other applicable legal or regulatory provisions.

2 - The operators shall have a further obligation to obtain confirmation of the data contained in the player registrations.

3 - The operators shall be obliged to have at least 60% of their share capital represented by shares which enable the issuer, at any given time, to know who are the relevant holders, and it is compulsory to communicate to the monitoring, inspection and regulatory body all the acts or business transactions which imply the acquisition, transfer or charging of such shares, within 30 days of the date on which the undertaking became aware of the act or transaction in question.

## Article 27



### **Employees**

The members of the company bodies, the employees and the other workers of the operators who provide services which are directly or indirectly associated with offering online gambling and betting shall be obliged to comply with, and cause to be complied with, the applicable legal provisions, as well as the applicable regulations, instructions and guidelines, keep secret the information to which they have access in the course of their activity, and provide every cooperation to the monitoring, inspection and regulatory body.

## **SUBSECTION II**

### **Website**

#### **Article 28**

##### **Website**

1 - Operators shall be obliged to set up a website with the domain name identification “.pt” for operating online gambling and betting, to which all connections established from locations within Portugal or which use player accounts registered in Portugal shall be redirected.

2 - The website may not include any content other than that relating to the online gambling and betting authorised by the relevant licences.

#### **Article 29**

##### **Operating hours**

1 - Online gambling and betting shall be operated 24 hours a day, 365 days a year, and the day shall be deemed to begin at 00:00:00.

2 - The monitoring, inspection and regulatory body may authorise a reduction of the operating hours or the temporary suspension of operations.

#### **Article 30**

##### **Information for players**

The website shall provide players all the information about their rights and duties, including those provided for in Article 38, as well as the following:

- a) clear, true, full and up-to-date information about the rules of online gambling and betting, the methods of payment allowed, the minimum and maximum stakes, and the rules for calculating and paying prizes;
- b) information about how to access their personal data;
- c) information about bans on gambling, including those relating to minors, incapacitated persons, and persons who, voluntarily or under a court decision, are prevented from gambling;
- d) warnings against excessive online gambling and betting and about the player’s right of self-exclusion;
- e) contact details of entities which provide support to gamblers with dependence and addiction problems;

f) the logotype and contact details of the operator and of the monitoring, inspection and regulatory body;

g) reference to the holding of a licence for operating online gambling and betting;

h) information necessary for the players to make an informed choice regarding their activities as a player, fostering moderate, non-compulsive and responsible gambling behaviour.

## **Article 31**

### **Duties of the intermediary network service providers**

1 - Without prejudice to compliance with other legal and regulatory duties relating to the pursuit of their activity, intermediary network service providers shall be obliged, within a maximum period of 48 hours of the notification that online gambling and betting is being offered by an entity which is not legally qualified to do so, to follow the orders of the monitoring, inspection and regulatory body in order to prevent access to, the availability of, and the use of such an offer.

2 - For the purposes of the preceding clause, it shall be considered that intermediary network services providers are obliged, *inter alia*:

a) when they provide the internet access service, to comply with the orders of the monitoring, inspection and regulatory body in order to deny access to the online gambling and betting service, namely by blocking or interrupting communications with the same;

b) when they provide the network content association service, by means of search tools, hyperlinks or similar processes, to comply with the orders of the monitoring, inspection and regulatory body in order to deny access to the online gambling and betting service;

c) when the online gambling and betting service is stored on their servers, including hosting, caching or other means, comply with the orders of the monitoring, inspection and regulatory body in order to remove it or deny access to the same.

3 - The intermediary network service providers shall have a further obligation to the monitoring, inspection and regulatory body to:

- a) inform it immediately, whenever they become aware of unlawful online gambling and betting activities carried on through the services which they provide;
- b) satisfy requests for identification of the users of the services with whom they have storage agreements.

## **SUBSECTION III**

### **Gambling technical system**

#### **Article 32**

##### **Gambling technical system requirements**

1 - The operators shall have a gambling technical

system for organising and operating online gambling betting which enables them to comply with the obligations arising out of the RJO and those which stem from the relevant rules of execution or from the regulations, instructions or guidelines of the monitoring, inspection and regulatory body.

2 - In structuring the gambling technical system, the operators shall ensure, *inter alia*, that:

a) all access to the gambling platform and all the other traffic between the player and the gambling platform relating to the activity of online gambling and betting is always channelled through the reporting front-end infrastructure;

b) all the other operations relating to the activity of online gambling and betting, occurring in any of the components of the gambling technical system, are always reported to the reporting front-end infrastructure;

c) the reporting front-end infrastructure shall record all the data relating to the online gambling and betting activity and report them to the control infrastructure;

d) the reporting front-end infrastructure permits, at any given time, access by the monitoring, inspection and regulatory body to the other information existing therein.

3 - The gambling technical system shall contain mechanisms which ensure that the information is secure and, *inter alia*:

a) the record of all the actions in relation to each player;

b) the record of all the operations and interventions which take place;

c) the registration of the players and their player accounts;

d) the record of all the changes and occurrences which take place on the gambling platform;

e) the authentication and identification of the players:

f) that access to the gambling technical system is effected solely on the conditions defined by the monitoring, inspection and regulatory body;

g) the integrity, availability, confidentiality and all the other communications security attributes, as well as of all the information processed and stored, including all the communications with the reporting front-end infrastructure and between the latter and the control infrastructure, including the access referred to in the preceding clause.

4 - The operators shall adopt appropriate security controls which conform to International Standard ISO 27001, with regard, in particular, to the policy of data security, organisation, human resources, physical and environmental safety, security of equipment, operations and communications, control of access and acquisition,

and the development and maintenance of information and management systems for business continuity.

5 - The operators shall keep backup copies and adopt technical measures and contingency and business continuity plans which will enable, particularly in cases of data loss, the complete recovery of the data.

#### Article 33

##### **Random number generator**

The generation of results in games of chance shall be based on a certified random number generator.

#### Article 34

##### **Access and technical control**

Operators are obliged to:

a) have all the components of the gambling technical system located on premises to which the monitoring, inspection and regulatory body may have access at any given time;

b) guarantee access and the necessary permissions, from the premises of the monitoring, inspection and regulatory body, to any component of the gambling technical system, regardless of the location of the premises in question;

c) assure that the reporting front-end infrastructure is set up in the national territory and contains all the information about all the operations relating to the online gambling and betting activity;

d) store in the national territory data relating to the activity of online gambling and betting for a period of 10 years;

e) deliver to the monitoring, inspection and regulatory body on or before the fifteenth day of each month reports on the activity carried on in the previous month.

#### Article 35

##### **Certification and official approval of the gambling technical system**

1 - The operators shall obtain certification of the gambling technical system from the entities included in a list to be released by the monitoring, inspection and regulatory body on its website.

2 - The official approval of the gambling technical system is dependent on the following cumulative conditions being met:

a) demonstration of the gambling technical system certification;

b) compliance with all the requirements and specifications for the gambling technical system;

c) payment of the official approval fee within the

period stipulated for the purpose by the monitoring, inspection and regulatory body.

3 - The monitoring, inspection and regulatory body shall establish the specifications which the gambling technical system must comply with in order to receive certification and official approval.

4 - The monitoring, inspection and regulatory body may ask the operators, during the official approval process, for all the information it deems necessary to analyse the structuring project of the gambling technical system and carry out the tests necessary to verify the requirements and specifications referred to in indent *b*) of clause 2.

5 - The certification of the gambling technical system for the operating of games of chance which is the subject-matter of the licence referred to in indent *d*) of Article 12(1) shall only cover the types of games which the operator intends to make available.

6 - During the term of the license, the operator shall obtain new certification and official approval of the gambling technical system whenever:

*a*) it intends to make available the types of games provided for in the licence referred to in indent *d*) of Article 12(1), which have not yet been certified;

*b*) it intends to operate new types of games of chance besides those referred to in indent *d*) of Article 12(1), without prejudice to the provisions of Article 12(2) to (4).

## Article 36

### Gambling technical system audit

After official approval is given, the monitoring, inspection and regulatory body shall conduct periodic audits of the gambling technical system.

## SECTION III

### Engaging in online gambling and betting

## Article 37

### Player registration

1 - The operators shall be obliged to ensure that the player registration contains the full name of the player, the date of birth, nationality, occupation, home address, civil identification or passport number, tax number, e-mail address and the identifying details of the payment account.

2 - The operator shall check the identity of the players using one of the following means:

*a*) by consulting the public entity databases in real time by means of a connection to the monitoring, inspection and regulatory body;

*b*) directly on the website itself, by means of the

citizen's card or the digital mobile key.

3 - When it is not possible to verify the identity of the players as set out in the preceding clause, this shall be done by means of a copy of an identifying document, containing a photograph and the date of birth.

4 - The player shall be the holder of the payment account referred to in clause 1.

5 - The registration shall only become active after the identity of the player has been verified and the non-existence of any gambling ban confirmed, after which the player may engage in online gambling and betting.

6 - Each player shall only be permitted one registration per website and shall be allocated, after this is activated as set out in the preceding clause, a unique username and password for accessing the website.

7 - The operators shall be obliged to implement, in the modules for setting up player registrations, the necessary mechanisms to ensure compliance with clauses 2 and 3.

8 - Guest accounts may be set up in order to allow players to use the website and engage in a demonstration of online gambling and betting without any money being used, and in such cases, the operator is not permitted to award any prizes.

9 - The online gambling and betting demonstration, provided for in the preceding clause, shall comply with the same exact characteristics of online gambling and betting using money.

10 - The procedures for suspending and cancelling registrations shall be defined by the monitoring, inspection and regulatory body.

## Article 38

### Rights and duties of the players

1 - The players shall be entitled, *inter alia*, to:

*a*) receive the prizes owed to them;

*b*) play freely and without any kind of coercion;

*c*) have, at any time, information about the amounts played or bet and about the balance of their player account;

*d*) identify themselves in a secure manner to the operator;

*e*) have their privacy guaranteed and the data provided to the operator for the purposes of their player registration protected;

*f*) be aware, at any time, of the identity and contact details of the operator and, if they should intend to lodge a complaint, the way in which to proceed;

*g*) have available to them, on the website, information about engaging in responsible gambling.

2 - The players are obliged, *inter alia*, to:

*a*) identify themselves to the operator, in accordance

with the rules established in the RJO;

b) indicate, when registering on the website, a payment account of which they are the holders and to which all the amounts to be transferred from the player account should be credited;

c) supply to the operator a copy of a document which proves that they are the holder of the payment account referred to in the preceding indent, for the purposes of receiving the balances of the player accounts;

d) comply with the law, as well as with the regulations, instructions and guidelines of the monitoring, inspection and regulatory body;

e) not disrupt the normal functioning of the online gambling and betting.

#### Article 39

##### **Self-exclusion**

1 - The website shall have mechanisms available which enable players to exclude themselves from the online gambling and betting.

2 - Players shall be entitled to exclude themselves directly on the website, being prevented from playing on the site in question during the period of time which they indicate.

3 - Players shall be further entitled to exclude themselves directly on the website of the monitoring, inspection and regulatory body and, in this case, shall be prevented from gambling on the websites of all the operators.

4 - The self-exclusion period shall have a minimum duration of three months and shall continue until the date stipulated by the player or, in the absence of any such stipulation, for an indeterminate period of time.

5 - Without prejudice to the minimum duration period of three months stipulated in the preceding clause, the player may communicate the end of the self-exclusion, or if a period was stipulated, the early termination of the period in question, which shall become effective one month after the relevant communication.

#### Article 40

##### **Player account**

1 - The operator shall set up a player account associated with the registration of each player, with unique identification details, where all the transactions made are processed and recorded.

2 - Each player may only have one player account on each website.

3 - The balance of the player account may not, under any circumstances, be negative.

4 - The player account may only be operated at the

initiative of the player.

5 - Money transfers between player accounts are not permitted.

6 - In the event of the player's death, the operator shall transfer the balance of the player account to the payment account indicated and held by the same, within a maximum period of three days of the date on which the death certificate is submitted to it.

7 - The website shall have mechanisms which permit the transfer of the balance from the player account to the payment account indicated and held by the same.

8 - The operators are obliged to guarantee that the transactions made in the player account unequivocally identify the origin of the transactions.

9 - The operators shall have mechanisms which prevent the creation of anonymous accounts or accounts in the name of third parties.

10 - The terms and manner of compliance with the obligations set out in the preceding clauses and the procedures for deactivating, suspending and cancelling the player accounts shall be laid down in the regulation of the monitoring, inspection and regulatory body.

#### Article 41

##### **Controlling the player account**

1 - The operators shall ensure the existence of technological processes, procedures and measures which guarantee that the acts carried out are not repudiated.

2 - The operators shall ensure that the player accounts are not used for purposes other than online gambling and betting.

#### Article 42

##### **Payment methods**

1 - In online gambling and betting operations, only electronic payment methods using the legal tender in Portugal shall be permitted.

2 - For funding the player account, the operators may only allow payment methods supplied by payment service providers duly authorised by the competent authorities of the relevant countries or jurisdictions and which allow for the person ordering the payment operation to be identified.

3 - The online gambling and betting operators, as well as the members of their company bodies, their employees and other workers, shall be prohibited from granting loans to players or making available, directly or indirectly, mechanisms which enable players to grant loans to each other.

#### SECTION IV

##### **Accounting and financial control**

#### Article 43

#### **Accounting control**

Without prejudice to other applicable accounting obligations, the operators shall possess a cost accounting system organised in such a way as to have a separate costs centre where only the transactions involved in the online gambling and betting operations are recorded.

#### **Article 44**

#### **Controlling payments**

1 - The payments of the sums owed to the players shall be made by the operators through the bank account referred to in indent *h*) of Article 26 (1).

2 - The operators are obliged to keep, in the account referred to in the preceding clause, a minimum balance which permits them to cover payment of the total balance of the player accounts.

3 - The operators shall provide the monitoring, inspection and regulatory body, on the first working day of the month after that to which it refers, information about the sums on deposit in the bank account referred to in the preceding clauses and the total balance of the player accounts.

### **CHAPTER IV**

#### **Monitoring, inspection and regulation**

#### **Article 45**

#### **Monitoring, inspection and regulatory body**

The monitoring, inspection and regulatory duties relating to the operating of and engagement in online gambling and betting shall be performed by the gambling commission of *Instituto do Turismo de Portugal, I.P.*, (gambling commission) and by the Serviço de Regulação e Inspeção de Jogos of *Instituto do Turismo de Portugal, I.P.* (*Serviço de Regulação e Inspeção de Jogos*), under the terms set out in the organic law of the aforementioned Institute, approved by Decree-Law No. 129/2012, of 22 June.

#### **Article 46**

#### **Provisions governing the activity of the monitoring, inspection and regulatory body**

1 - The administrative activity of the monitoring, inspection and regulatory body shall be subject to the Administrative Procedure Code.

2 - Any challenge to the decisions of the monitoring, inspection and regulatory body shall follow, without prejudice to the RJO, the provisions of the Administrative Court Procedure Code.

3 - In the challenges referred to in the preceding clause, it shall be presumed, until proven otherwise, that deferring the enforcement of the decision is seriously detrimental to the public interest.

#### **Article 47**

#### **Specific monitoring, inspection and regulatory powers**

1 - Operators are obliged to cooperate with the monitoring, inspection and regulatory body within the scope of its inspection activity.

2 - Whenever the monitoring, inspection and regulatory body detects a website which provides online gambling and betting operated by an entity which is not legally qualified to do so, it shall notify the entity in question to, within a maximum period of 48 hours, cease and desist from the activity and remove the online gambling and betting service from the internet, without prejudice to any criminal liability which it may incur.

3 - Once the time limit stipulated in the preceding clause has expired without the activity having ceased and the service having been removed from the internet, the monitoring, inspection and regulatory body shall notify the intermediary network service providers, under the terms and for the purposes of Article 31.

4 - Without prejudice to Article 6(j), the employees of the monitoring, inspection and regulatory body, as part of the activities of monitoring, auditing and supervising the gambling technical system, may engage in online gambling and betting, with the objective of checking whether the system meets all the requirements and specifications stipulated in the law and in the regulations, instructions and guidelines of the monitoring, inspection and regulatory body.

5 - The monitoring, inspection and regulatory body shall set up, keep up-to-date and release a register of the online gambling and betting operators and their websites.

6 - The monitoring, inspection and regulatory body shall monitor the volume of online gambling and betting and may, to this end, have access to the player accounts.

7 - Subject to compliance with personal data protection rules, the monitoring, inspection and regulatory body shall set up and keep up to date a centralised national registration system of players who, voluntarily or under a court order, are banned from gambling, which shall be made available to the operators.

#### **Article 48**

#### **Regulation**

1 - The monitoring, inspection and regulatory body shall announce the beginning of the procedure on its website, indicating, *inter alia*, the subject-matter and form in which contributions to the drafting of the regulation may be presented.

2 - In the introductory report on the regulations, the reasons for the respective options shall be given.

3 - The regulations shall be published in the Official Journal (*Diário da República*), without prejudice to being made available on the website of the monitoring, inspection and regulatory body.

## CHAPTER V

### Offences and penalties

#### SECTION I

#### Criminal offences

##### Article 49

##### **Illegal operating of online gambling and betting**

1 - Any person who, by any means and without being duly authorised for the purpose, operates, promotes, organises or consents to operating online gambling and betting, or makes it available in Portugal through servers situated outside of the national territory, shall be liable to a term of imprisonment of up to five years or a penalty payment of up to 500 days.

2 - Negligence is punishable.

3 - Attempt is punishable.

##### Article 50

##### **Online gambling and betting fraud**

1 - Any person who tampers with the rules and functioning processes which are established for online gambling and betting, inserting, modifying, deleting or concealing computer data, or interfering in any way in the processing of the same, with the intention of ensuring good or bad luck, shall be liable to a term of imprisonment of three to eight years or with a penalty payment of up to 600 days.

2 - Negligence is punishable.

3 - Attempt is punishable.

##### Article 51

##### **Contempt**

1 - Any person who, during a monitoring, audit and supervisory check of the gambling technical systems, fails to follow legitimate orders or warrants issued by the monitoring, inspection and regulatory body, shall be subject to the penalty set down for the offence of aggravated contempt.

2 - It is a requirement of the commission of this offence that the possibility that the offender may incur the penalty for aggravated contempt has been expressly communicated in advance.

3 - The same penalty shall apply to anyone who fails to comply with or obstructs compliance with the additional penalties imposed in administrative offence proceedings, or with the legally prescribed precautionary measures.

##### Article 52

##### **Additional penalties**

At the same time as the term of imprisonment or fine and besides those set out in the Criminal Code, the following additional penalties may be imposed:

a) a ban, for a period of not more than five years, on the pursuit of the activity to which the crime is related, including being barred from performing administrative, executive, management or supervisory duties at entities which have as their company object the operating of gambling and betting, when the infringement has been committed in flagrant abuse of this position or with a manifest and serious breach of the duties inherent to the same;

b) publication of the conviction at the expense of the defendant in locations suitable for achieving the general deterrent purposes of the legal system, particularly on websites and publications specific to the area of activity in question.

##### Article 53

##### **Criminal liability of undertakings**

1 - Undertakings, companies, even if improperly incorporated, and other equivalent entities shall be liable for the offences set out in Articles 49 and 50, when committed:

a) in their name and in the collective interest by persons who hold a leadership position in such undertakings, companies or other equivalent entities: or

b) by anyone acting on the authority of persons referred to in the preceding indent, owing to the breach of the duties of vigilance and monitoring incumbent on them.

2 - A leadership position is understood as one occupied by the members of the company bodies, the representatives of the undertaking and whoever has the authority within the undertaking to exert control over its activity.

3 - The liability of undertakings, companies, even if improperly incorporated, and other equivalent entities shall be excluded when the offender has acted against express orders or instructions issued by whoever has the power to do so.

4 - The criminal liability of the entities referred to in clause 1 shall not exclude the individual liability of the respective offenders, nor shall it depend on their being held liable.

5 - If the fine is imposed on an entity with no legal personality, the ordinary assets shall be liable and, where these are lacking or insufficient, the assets of each one of the associates, jointly and severally.

##### Article 54

##### **Relaying decisions**

All the decisions and rulings handed down in criminal

proceedings relating to online gambling and betting shall be relayed electronically by the court to the monitoring, inspection and regulatory body, for its information.

#### Article 55

##### Subsidiary legislation

The provisions of the Criminal Code, the Criminal Procedure Code, Law No. 109/2009, of 15 September, and Law No. 144/99, of 31 August, as amended by Law Nos. 104/2001, of 25 August, 48/2003, of 22 August, 48/2007, of 29 August, and 115/2009, of 12 October, shall apply on a subsidiary basis to the procedural provisions and to international cooperation in criminal matters, respectively.

## SECTION II

### Administrative offences

#### Article 56

##### Very serious administrative offences

The following shall constitute a very serious administrative offence, committed by the operator, punishable by fine:

*a)* making available fixed-odds sports bets on sports, competitions, or sporting events which are not included in the list approved by the monitoring, inspection and regulatory body;

*b)* making available totalisator/pari mutual or fixed-odds bets on horse races or competitions which are not included in the list approved by the monitoring, inspection and regulatory body;

*c)* making available fixed-odds sports bets or totalisator/pari mutual horse racing bets on types or times of bets or on kinds of results different from those established by the monitoring, inspection and regulatory body;

*d)* failing to comply with the rules of execution of online gambling and betting established by the monitoring, inspection and regulatory body;

*e)* failing to increase the security deposit within the time limit set for the purpose by the monitoring, inspection and regulatory body;

*f)* transferring the licence without the prior authorisation of the monitoring, inspection and regulatory body;

*g)* failing to pay the players the announced amount of the prizes;

*h)* failing to order the transfer of the balance of the player account to the payment account indicated in advance and held by the player, when the latter so requests;

*i)* ordering the transfer of the balance of the player account to a payment account other than the one indicated in advance and held by the player;

*j)* failing to have a bank account in a credit institution established in a European Union Member State, for the pursuit of the activity of online gambling and betting;

*k)* failing to make all the transactions related to the online gambling and betting activity in the bank account opened specifically for the purpose;

*l)* using the bank account for the online gambling and betting activity for an unrelated transaction;

*m)* breaching the obligation to assure the integrity, availability, confidentiality and all the other security attributes of online gambling and betting or of the communications, pursuant to indent *i)* of Article 26(1) or of Article 32(3), (4) or (5);

*n)* failing to redirect to the website with the domain name identification “.pt” all connections established from locations within Portugal or which use player accounts registered in Portugal;

*o)* failing to channel all connections to the gambling platform and all the other traffic between the player and the gambling platform relating to the online gambling activity through the reporting front-end infrastructure;

*p)* failing to report all the operations relating to the online gambling and betting activity occurring in any component of the gambling technical system to the reporting front-end infrastructure;

*q)* failing to report all the data relating to the online gambling and betting activity to the reporting front-end infrastructure;

*r)* failing to report all the recording front-end infrastructure data relating to the online gambling and betting activity to the control infrastructure;

*s)* failing to make available to the monitoring, inspection and regulatory body, at any given time, access to the gambling technical system pursuant to indents *a)* and *b)* of Article 34;

*t)* failing to keep the recording front-end infrastructure in the national territory;

*u)* using an uncertified and unapproved gambling technical system;

*v)* permitting any player to register without checking their identity or without confirming that the player in question is not banned from gambling;

*w)* permitting any player to have more than one registration on the same website;

*x)* failing to create a player account associated with the registration of each player;

*y)* setting up two or more player accounts for the same player on the same website;

*z)* setting up a player account for several players;

*aa)* conducting operations in the player account which

are not at the player's initiative;

*bb*) permitting the transfer of money between player accounts;

*cc*) permitting the player to use the player account of another player;

*dd*) failing to have, on the website, mechanisms which permit the transfer of the balance from the player account to the payment account indicated and held by the same;

*ee*) permitting the use of a payment method which is not in conformity with Article 42(1) and (2);

*ff*) concealing or altering facts or accounting values from the monitoring, inspection and regulatory body which prevent an accurate IEJO assessment;

*gg*) failing to pay the IEJO within the legal time limit;

*hh*) failing to comply with the regulations, instructions or guidelines issued by the monitoring, inspection and regulatory body.

## Article 57

### Serious administrative offences

1 - The following shall constitute a serious administrative offence, committed by the operator, punishable by fine:

*a*) permitting online gambling and betting to be engaged in by a minor, anyone declared unfit under the civil law or anyone who is, voluntarily or under a court decision, banned from gambling;

*b*) permitting online gambling and betting to be engaged in by any member of one of its company bodies or by any employee on the operator's website;

*c*) permitting online gambling and betting to be engaged in by a person who has or may have access to the computer systems of the operator's website;

*d*) failing to comply with the technical capacity requirements set out in Article 15;

*e*) failing to comply with the financial autonomy indicator provided for in Article 16;

*f*) failing to make available or not providing on the website, in a clear, true, full and up-to-date manner, information about the rules of online gambling and betting, the payment methods allowed, the minimum and maximum stakes, or the rules of calculating and paying prizes;

*g*) failing to communicate to the monitoring, inspection and regulatory body any change in the composition of its company bodies, within ten days of the same;

*h*) failing to have 60% of its share capital represented

by shares which enable the issuer to know, at any given time, the identity of the holders;

*i*) failing to communicate to the monitoring, inspection and regulatory body within a period of 30 days from the date on which it becomes aware of any act or transaction which implies the acquisition, transfer, or charging of shares whose owner's identity is known:

*j*) permitting the generation of results in games of chance that are not based on a certified random number generator;

*k*) failing to store in the national territory the data relating to the online gambling and betting activity for a period of 10 years;

*l*) failing to have all the items identified in Article 37(1) contained in the player registration;

*m*) failing to conduct a check of the player's identity using one of the methods indicated in Article 37(2) and (3);

*n*) failing to make available on its website mechanisms which permit the players to exclude themselves;

*o*) failing to identify in an unequivocal manner the origin of the transaction in an operation conducted in the player account;

*p*) permitting the player account to be used for a purpose other than online gambling and betting;

*q*) granting a loan to the player;

*r*) making available, directly or indirectly, a mechanism which enables the players to grant loans to each other;

*s*) failing to have organised cost accounting, in accordance with Article 43;

*t*) failing to keep, in the bank account for the activity of operating online gambling and betting, a minimum balance which enables it to cover payment of the total balance of the player accounts.

2 - The breach of any of the duties established in Article 31 by the intermediary network service provider is punishable by fine.

3 - When any person who is banned from gambling engages in online gambling and betting, this constitutes a serious offence punishable by fine, pursuant to Article 6.

4 - The disruption of the normal operating and course of online gambling and betting by a player is a serious administrative offence, punishable by fine.

5 - The following shall also constitute a serious administrative offence, punishable by fine, committed by the members of the company bodies, employees or workers of the operator:



a) granting a loan to a player;

b) making available, directly or indirectly, a mechanism which enables players to grant loans to each other.

#### Article 58

##### **Minor administrative offences**

1 - The following shall constitute a minor administrative, committed by the operator, punishable by fine:

a) failing to draw up a plan or to adopt the measures necessary for compliance with the principles of responsible gambling, as set out in Article 7 or in the regulations, instructions or guidelines issued by the monitoring, inspection and regulatory body in this respect;

b) failing to define a privacy policy which identifies the minimum amount of information which is requested from the players, the purpose for which it is intended, or the conditions on which it may be disclosed;

c) failing to appoint a manager responsible for the operating of online gambling and betting;

d) failing to include, on the website, information about bans on gambling;

e) failing to transmit to the monitoring, inspection and regulatory body, within a period of 24 hours of the date of receipt of the relevant communication, the identity of any gambler who has excluded themselves;

f) including, on the website, content other than that relating to the online gambling and betting authorised by the relevant licences;

g) reducing the operating hours or temporarily suspending the operating of online gambling and betting without the prior authorisation of the monitoring, inspection and regulatory body;

h) failing to make available, on the website, information for the players about how to access their personal data;

i) failing to include, on the website, warnings about excessive online gambling and betting or about the players' right of self-exclusion;

j) failing to include, on the website, the contact details of entities which provide support to players with dependence and addiction problems;

k) omitting, from the website, the logotype or contact details of the operator;

l) omitting, from the website, the logotype or contact details of the monitoring, inspection and regulatory body;

m) omitting, from the website, the reference to holding a licence to operate online gambling and betting;

n) failing to provide the players, on the website, the

necessary information to foster moderate, non-compulsive and responsible gambling behaviour;

o) failing to submit within the established time limit the activity report provided for in indent e) of Article 34;

p) permitting a player registered as a guest to engage in online gambling and betting using money or to receive prizes;

q) failing to transfer, in the event of a player's death, the balance of the player account to the payment account indicated and held by the same, within a maximum period of three days of the date on which the relevant death certificate is submitted to it;

r) failing to provide within the established time limit the information provided for in Article 44(3).

2 - Engaging in online gambling and betting on the website of an entity which is not licensed to operate online gambling and betting also constitutes a minor administrative offence, punishable by fine.

#### Article 59

##### **Liability for the commission of administrative offences**

1 - Individuals, undertakings, companies, even if improperly incorporated, and other equivalent entities may be held liable for the commission of administrative offences.

2 - Undertakings, companies, even if improperly incorporated, and other equivalent entities, shall be liable for the administrative offences set out in the RJO, when committed:

a) in their name or in the collective interest by persons who hold a position of leadership therein; or,

b) by anyone acting on the authority of persons referred to in the preceding indent, owing to the breach of the duties of vigilance and monitoring incumbent on them.

3 - A leadership position is understood as one occupied by the members of the company bodies, the representatives of the undertaking, and whoever has the authority within the undertaking to exert control over its activity.

4 - The liability of undertakings, companies, even if improperly incorporated, and other equivalent entities shall be excluded when the offender has acted against the express orders or instructions issued by whoever has the power to do so.

5 - Persons who occupy a leadership position, as well as those responsible for supervising areas of activity in which any administrative offence is committed, shall incur the penalty stipulated for the offender, especially mitigated, when they knew or should have known of the

commission of the infringement, but failed to adopt the appropriate measures to bring it to an immediate end, unless a more serious penalty applies by virtue of another legal provision.

6 - The administrative offence liability of the entities referred to in clause 2 shall not exclude the individual liability of the respective offenders, nor shall it depend on their being held liable.

#### Article 60

##### **Punishment of negligence and attempt**

Negligence and attempt are punishable.

#### Article 61

##### **Fines**

1 - Very serious administrative offences are punishable by a fine of between EUR 50 000.00 and EUR 1 000 000.00, or between EUR 50 000.00 and 10% of the turnover of the offender for the financial year immediately prior to that of the sentencing decision, if this is in excess of EUR 1 000 000.00.

2 - Serious administrative offences are punishable by a fine of between EUR 5 000.00 and EUR 50 000.00, or between EUR 5 000.00 and 5% of the turnover of the offender for the financial year immediately prior to that of the sentencing decision, if this is in excess of EUR 50 000.00.

3 - The minor administrative offences set out in Article 57(2) are punishable by a fine of between EUR 5 000.00 and EUR 50 000.00.

4 - Minor administrative offences are punishable by a fine of up to EUR 5 000.00, or up to 0.5% of the turnover of the offender for the financial year immediately prior to that of the sentencing decision, if this is in excess of EUR 5 000.00.

5 - In the case of individuals, administrative offences are punishable as follows:

a) very serious administrative offences - a fine of between EUR 25 000.00 and EUR 500 000.00;

b) serious administrative offences – a fine of between EUR 2 500,00 and EUR 25 000.00;

c) minor administrative offences – a fine of up to EUR 2 500.00.

6 - If the offender derives financial benefit from the commission of the infringement which is calculated at an amount higher than the applicable fine, the fine may be raised to the amount of the benefit, but may not, under any circumstances, exceed one-third of the maximum limits set in the preceding clauses.

7 - In the case of negligence or attempt, the minimum and maximum amounts of the fines set out in the preceding clauses shall be halved.

#### Article 62

##### **Turnover**

1 - For the purposes of clauses 1, 2 and 4 of the preceding article, turnover shall be considered the gross revenue of the offender calculated for the financial year before that of the commission of the infringement and reflected in the accounts.

2 - If the gross revenue to be taken into account in accordance with the preceding clause is based on a shorter period than that of the financial year of the offender, only the absolute maximum limits of the fine set out in clauses 1, 2 and 4 of the preceding article shall be taken into account.

#### Article 63

##### **Setting the amount of the fine**

1 - The amount of the fine is set taking into consideration, *inter alia*:

a) the duration of the infringement;

b) the gravity of the infringement, weighed up against the protection of the social order and the trust and safety of the entities involved;

c) fault;

d) the conduct of the offender in eliminating the offending behaviour;

e) the financial position of the offender;

f) the benefit which the offender derived from the commission of the administrative offence;

g) the administrative offence record of the offender for infringing the rules on online gambling and betting.

2 - The monitoring, inspection and regulatory body shall adopt, under its regulatory powers, guidelines containing the methodology to be used for imposing fines.

#### Article 64

##### **Waiver or reduction of the fine**

The fine may be waived or the amount of the fine reduced when there is a low degree of fault and the infringer cooperates and brings his participation in the infringement to an end before the close of the management stage of the administrative offence proceedings.

#### Article 65

##### **Joint and several liability of the operators**

1 - The operators shall be jointly and severally liable for the payment of fines, costs and other fees associated with the penalties imposed on the members of their company bodies, employees and other workers.

2 - The joint and several liability of the operators

referred to in the preceding clause shall be excluded when the members of the company bodies, the employees or other workers acted against express orders or instructions issued by whoever has the power to do so.

#### Article 66

##### **Reprimands**

1 - When the infringement has been brought to an end by the time a decision is handed down in the proceedings and no losses have arisen, particularly for the players, taking into account the other circumstances in which the infringement was committed, the offender may be penalised with a simple reprimand.

2 - The reprimand shall be made in writing and the fact which gave rise to it may not be raised again as an administrative offence.

#### Article 67

##### **Additional penalties**

1 - If the gravity of the infringement and the fault of the offender so warrant, the following additional penalties may be imposed:

a) confiscation and forfeiture of the subject-matter of the infringement, including the proceeds from the benefit obtained by the offender by committing the administrative offence, in compliance with Articles 22 to 26 of Decree-Law No. 433/82, of 27 October, as amended by Decree-Law Nos. 356/89, of 17 October, 244/95, of 14 September, and 323/2001, of 17 December, and by Law No. 109/2001, of 24 December;

b) suspension of the pursuit of the online gambling and betting activity;

c) publication of the penalty imposed for the commission of the administrative offence, at the expense of the offender and in locations suitable for achieving the general deterrent purposes of the legal system and the protection of the players;

d) prohibition of the right to take part in contract formation procedures or in procedures aimed at granting licences, the subject-matter of which covers the operating of gambling and betting.

2 - The penalties referred to in indents b) and d) of the preceding clause shall have a maximum duration of six months and two years respectively from the date of the final sentencing decision.

#### Article 68

##### **Assumptions for imposing additional penalties**

1 - The penalty referred to in indent a) of clause 1 of the preceding article may only be ordered when the subject-matter was used or intended to be used for the commission of an administrative offence, or was generated by such an offence.

2 - The penalty referred to in indent b) of clause 1 of

the preceding clause may only be ordered when the administrative offence has been committed in the course of or because of the online gambling and betting activity.

3 - The penalty referred to in indent d) of clause 1 of the preceding article may only be ordered when:

a) the practice which constitutes an administrative offence took place during or because of the relevant procedure; or

b) the operator has been penalised for significant or persistent operating shortcomings, provided that this fact has led to it being ordered to pay for damage or to other comparable penalties, including the suspension of the activity.

#### Article 69

##### **Compulsory pecuniary penalties**

Without prejudice to payment of the fine, compliance with the additional penalties and the provisions of Article 64, a compulsory pecuniary penalty may be imposed, fixed according to criteria of reasonability and proportionality, at an amount not in excess of 5% of the average daily turnover in the year before the decision, for each day of delay, as from the date of notification, when the offender fails to abide by a decision imposing a penalty or ordering the adoption of certain measures.

#### Article 70

##### **Jurisdiction**

1 - The commencement and management of administrative offence proceedings in respect of the infringements set out in the RJO fall within the purview of the *Serviço de Regulação e Inspeção de Jogos*.

2 - The decision in the proceedings, including the imposition of fines and additional penalties, is the responsibility of the gambling commission.

#### Article 71

##### **General rules on time limits**

1 - In the absence of any special provision, the time limit for requesting any act or measure, arguing nullities, filing interim applications or doing any other procedural acts shall be 10 working days.

2 - The time limits prescribed by law or by a decision of the monitoring, inspection and regulatory body may be extended for an identical period upon a duly substantiated request from the offender.

3 - The monitoring, inspection and regulatory body shall deny the extension of the time limit whenever it reasonably believes that the application is intended merely to delay proceedings.

4 - No appeal shall lie from the decision to deny the application as provided for in the preceding clause.

#### Article 72

### Notice

1 - Notice shall be served by means of a registered letter addressed to the registered office or domicile of the addressee, or in person, where necessary.

2 - When the addressee does not have its registered office in Portugal, the notice shall be served on its branch in Portugal, or if there is none, on the registered office abroad.

3 - The notice may also be served by means of an e-mail to the address given for the purpose by the addressee, provided that this has been agreed to previously.

4 - The notice is presumed to have been served:

a) on the third day after registration or on the first working day thereafter if the third day is not a working day, in the cases provided for in the first part of clause 1 and the first part of clause 2;

b) on the fifth day after registration or on the first working day thereafter if the fifth day is not a working day, in the cases where the registered office or domicile of the offender is situated in the Autonomous Regions;

c) on the tenth day after registration or on the first working day thereafter if the tenth day is not a working day, in the cases provided for in the second part of clause 2;

d) on the third day after sending, in the cases provided for in the preceding clause.

5 - Whenever the offender is not located or refuses to accept service, he shall be deemed to have been served by means of an announcement published in one of the national newspapers of general circulation with a brief description of the charge against him.

6 - The notice of service shall be sent to the lawyer or defender, when one is retained or appointed, without prejudice to notices of precautionary measures, notices of charge, notices of decisions to close a case and sentencing decisions also being obligatorily served on the offender.

7 - In the case set out in the preceding clause, the time limit for effecting the ensuing procedural act shall run from the working day after the date of service of the last notice.

8 - The failure of the offender to appear for any act for which notice has been served in accordance with this article shall not prevent the administrative offence proceeding from running its course.

### Article 73

#### Instruction phase of the process

1 - Whenever the monitoring, inspection and regulatory body gathers sufficient evidence of the commission of an administrative offence and the identity of the offenders, it shall serve notice on these to, should

they so wish, within a period of not less than 10 days, give their written views on the facts claimed, the existing evidence and request any additional evidentiary measures they deem fit.

2 - The additional evidentiary measures requested by the offender may be denied by the monitoring, inspection and regulatory body in a reasoned decision if it considers such measures are blatantly irrelevant or are merely a delaying tactic.

3 - Without prejudice to the preceding clause, the monitoring, inspection and regulatory body may conduct additional evidentiary measures, even after the offender gives his views, and shall in this case serve notice of the further probative evidence on the latter in order to give his views thereon, within a period of not less than 10 days, should he so wish.

### Article 74

#### Evidence

1 - Evidence comprises all the facts which are legally relevant for demonstrating the existence or non-existence of the infringement, the punishability or otherwise of the offender, and for deciding on the applicable penalties and setting the amount of the fine.

2 - Except as otherwise provided by law, evidence shall be weighed up in accordance with the rules of experience and the freely-held beliefs of the monitoring, inspection and regulatory body.

3 - The information and documentation obtained in the course of exercising the monitoring, inspection and regulatory powers or of administrative offence proceedings instigated by the monitoring, inspection and regulatory body may be used as evidence in an administrative offence proceeding which is either in course or to be instigated, provided that the parties concerned are informed in advance of the possibility of their being used in this way.

### Article 75

#### Precautionary measures

1 - Whenever the infringement attributed to the operators is capable of affecting the safety of the players, the integrity, reliability or transparency of the gambling operations, or of putting public order at risk, the monitoring, inspection and regulatory body may, at any time during the proceeding, order the preventive suspension of their activity.

2 - The preventive suspension of the activity referred to in the preceding clause shall remain in effect until such time as the sentencing decision is considered *res judicata*, unless it is revoked by the monitoring, inspection and

regulatory body owing to the fact which gave rise to its being ordered having ceased.

3 - The adoption of the measure referred to in clause 1 shall be preceded by a hearing of the operators, unless such a hearing would pose a serious risk to the objective or efficacy of the same, in which case they shall only be consulted after it has been ordered.

#### Article 76

##### **Limitation period**

1 - The administrative offence proceeding shall be time-barred once eight years have elapsed since the administrative offence was committed.

2 - The limitation period shall be interrupted once notice of the charge has been served on the offender and this interruption shall have effect as from the service of notice of the act on any one of the parties to the proceedings.

3 - The administrative offence limitation period shall be suspended:

a) for the period of time during which a judicial appeal against the decision is pending;

b) from the time the case is sent to the Public Prosecutors' Office until it is returned to the monitoring, inspection and regulatory body, in accordance with Article 40 of the general provisions on administrative offences, approved by Decree-Law No. 433/82, of 27 October, as amended by Decree-Law Nos. 356/89, of 17 October, 244/95, of 14 September, 323/2001, of 17 December, and by Law No. 109/2001, of 24 December.

4 - The suspension of the limitation period may not exceed three years.

5 - The proceedings shall be time-barred after 10 years have elapsed, not including the suspension period.

#### Article 77

##### **Limitation period for fines and additional penalties**

The fines and additional penalties imposed in administrative offence proceedings shall be time-barred after a period of five years from the time the sentencing decision becomes final or is considered *res judicata*.

#### Article 78

##### **Appeals, court of jurisdiction and effects of an appeal**

1 - An appeal shall lie from decisions which the RJO does not classify as unappealable.

2 - No appeal shall lie against merely routine decisions and decisions to close a case, whether or not conditions are imposed.

3 - The court of territorial jurisdiction to decide on an appeal against the decisions of the monitoring, inspection and regulatory body shall be the court where its headquarters are located.

4 - The appeal shall not have the effect of staying the decision.

5 - In the case of a sentencing decision, the party concerned may request, upon lodging the appeal, that it should have the effect of staying the decision when enforcement of the same would cause him considerable loss, and offers to provide a security deposit, in cash or in the form of a suitable independent bank guarantee which can be mobilised in the same terms as the former, with the grant of this effect being conditional on the actual provision of the security deposit within the time limit set by the court.

#### Article 79

##### **Appealing interim decisions**

1 - Once an appeal has been lodged against an interim decision, the application shall be relayed to the Public Prosecutors' Office, stating the case number at the administrative stage.

2 - The application shall be accompanied by any items or information which the monitoring, inspection and regulatory body deems relevant for the decision on the appeal and arguments may be added.

3 - Appeals against interim decisions handed down at the administrative stage of the same proceeding shall form one single judicial proceeding.

#### Article 80

##### **Appealing precautionary measures**

The provisions of the preceding article shall apply to appeals lodged against decisions of the monitoring, inspection and regulatory body in which precautionary measures are ordered handed down in the same proceedings at the administrative stage.

#### Article 81

##### **Appealing the final decision**

1 - After being served notice of the final sentencing decision, the party concerned may lodge a judicial appeal within a non-extendible period of 30 days.

2 - Once the appeal against the final sentencing decision has been received, the monitoring, inspection and regulatory body shall submit the case file to the Public Prosecutors' Office within a non-extendible period of 30 days and may submit arguments and other items or information which it deems relevant for the decision on the appeal and may also file evidence.

3 - When there have been appeals against interim decisions or precautionary measures, the appeal against the final sentencing decision shall be dealt with in the case file of the only or of the first appeal lodged.

4 - The court may decide without holding a trial hearing if there is no opposition to its doing so from the defendant, the Public Prosecutors' Office or the

monitoring, inspection and regulatory body.

5 - When a trial hearing is held, the court shall decide on the basis of the evidence adduced at the hearing, as well as on the evidence filed at the administrative stage of the administrative offence proceedings.

6 - The monitoring, inspection and regulatory body may take part in the trial hearing through a representative nominated for the purpose.

7 - The withdrawal of the charge by the Public Prosecutors' Office shall be conditional on the agreement of the monitoring, inspection and regulatory body.

8 - The court shall serve notice of its decision on the monitoring, inspection and regulatory body, as well as of all orders which are not merely routine.

9 - The monitoring, inspection and regulatory body has standing to lodge an independent appeal against decisions handed down in challenge proceedings from which an appeal may lie, as well as to respond to appeals lodged.

#### Article 82

##### **Control by the court of jurisdiction**

1 - The court shall have full jurisdiction to decide on appeals lodged against decisions of the monitoring, inspection and regulatory body in which a fine or compulsory pecuniary penalty is fixed and may reduce or increase the amount of the fine or of the compulsory pecuniary penalty.

2 - Any decision of the monitoring, inspection and regulatory body which imposes penalties shall mention the provision in the final part of the preceding clause.

#### Article 83

##### **Appealing the judicial decision**

1 - An appeal may be lodged against the decisions and orders of the court with the appeal court of jurisdiction, from which no appeal shall lie.

2 - The following have standing to appeal:

a) the Public Prosecutors' Office and, independently, the monitoring, inspection and regulatory body - any decisions and orders which are not merely routine, including those which deal with nullities and other preliminary or interim issues, or on the imposition of precautionary measures;

b) the party targeted by the proceedings.

3 - Article 79(3), Article 80 and Article 81(3) shall apply, *mutatis mutandis*, to all the appeals provided for in this article.

#### Article 84

##### **Publicising decisions**

1 - The monitoring, inspection and regulatory body may publish on its website a non-confidential version of decisions handed down in accordance with indents *s)*, *ff)*, *gg)* and *hh)* of Article 56, mentioning whether a judicial appeal is pending.

2 - The monitoring, inspection and regulatory body may publish on its website the rulings in appeals lodged in accordance with Article 78(1) and clause 1 of the preceding article.

#### Article 85

##### **Distribution of fines, penalties and benefit**

The proceeds from the fines, compulsory pecuniary penalties and the financial benefit seized in the administrative offence proceedings shall revert as follows:

a) 60% to the State;

b) 40% to the monitoring, inspection and regulatory body.

#### Article 86

##### **Subsidiary legislation**

Administrative offences shall be governed on a subsidiary basis by the general administrative offence provisions, approved by Decree-Law No. 433/82, of 27 October, as amended by Decree-Law Nos. 356/89, of 17 October, 244/95, of 14 September, 323/2001, of 17 December, and by Law No. 109/2001, of 24 December.

#### CHAPTER VI

##### **Tax treatment and allocation of revenue**

#### Article 87

##### **No liability for Corporate Income Tax and Stamp Duty**

The revenue deriving directly from the pursuit of activities liable to the IEJO shall not be liable to Corporate Income Tax (IRC) and Stamp Duty.

#### Article 88

##### **Special online gambling tax**

1 - The operators shall be liable to the IEJO.

2 - The IEJO shall be assessed monthly by the monitoring, inspection and regulatory body and the relevant collection document shall be sent by the fifth day of the month after that to which it refers and paid by the operators on or before the fifteenth day of the same month.

3 - Certificates of debt issued by the monitoring, inspection and regulatory body in respect of the non-payment of the IEJO constitute enforceable instruments and shall be forcibly collected by the Tax and Customs Authority in accordance with the Tax Procedure Code (CPPT).

4 - The rules laid down in the General Taxation Law

and in the CPPT shall apply, *mutatis mutandis*, to the IEJO, in respect of any matter which is not specifically regulated in the RJO.

5 - The net IEJO calculated in accordance with the following articles shall constitute revenue for each Autonomous Region, to be established in accordance with the provisions on capitation.

6 - The members of government responsible for finance and tourism, after consulting the regional governments, shall regulate, by means of a ministerial ordinance, the manner of allocating the revenue in question to the Autonomous Regions, in particular, the capitation formula.

#### Article 89

##### Special online gambling tax on games of chance

1 - The IEJO on games of chance shall be levied on the gross revenue of the operator.

2 - The IEJO rate on games of chance is 15%.

3 - Without prejudice to the preceding clause, when the operator's annual gross revenue exceeds EUR 5 000 000.00, the taxable income shall be divided into two parts:

a) up to the amount of EUR 5 000 000.00, the 15% rate shall be applied;

b) the rate levied on the surplus amount shall be determined on the basis of the following formula:

$$\text{rate} = [15\% \times (\text{amount of annual gross revenue} / \text{EUR } 5\,000\,000.00)].$$

4 - The rate calculated pursuant to indent b) of the preceding clause shall have a maximum limit of 30%.

5 - The difference between the amount calculated in accordance with clause 3 and the amount of the tax assessed monthly in accordance with clause 2 with reference to the same year shall be paid on or before 15 January of the year after that to which it refers, and the relevant tax payment notice shall be paid on or before the thirty-first day of the same month.

6 - The preceding clauses shall not apply when the fees charged by the operator are the sole revenue deriving directly from operating games of chance in which the players play against each other and, in this case, the IEJO shall be levied on these fees at the rate of 15%.

7 - In the case provided for in the preceding clause, the tax shall be assessed monthly on or before the fifteenth day of the month after that to which it refers, and the relevant tax payment notice shall be paid on or before the last day of the same month.

8 - Of the amount of IEJO calculated in accordance with this article, 37% shall constitute revenue for the monitoring, inspection and regulatory body.

9 - Without prejudice to clause 5 of the preceding article, the net amount of IEJO, calculated in accordance

with the preceding clause, shall be allocated as follows:

a) 77% to *Turismo de Portugal, I.P.*;

b) 20% to the State;

c) 2.5% to the *Fundo de Fomento Cultural* [Cultural Promotion Fund] ;

d) 0.5% to the *Serviço de Intervenção nos Comportamentos Aditivos e nas Dependências* (SICAD) [Addictive Behaviour and Dependence Intervention Body].

#### Article 90

##### Special online gambling tax on fixed-odds sports betting

1 - In fixed-odds sports betting, the IEJO shall be levied on the revenue from the amount of the bets placed.

2 - When the operator charges a fee on the amount of the bet, the IEJO shall also be levied on this amount.

3 - The IEJO rate in the situations described in the preceding clauses is 8%.

4 - Without prejudice to the preceding clause, when the amount of the bets placed with the operator exceeds EUR 30 000 000.00, the taxable income shall be divided into two parts:

a) up to the amount of EUR 30 000 000.00, the 8% rate shall be applied;

b) the rate levied on the surplus amount shall be determined on the basis of the following formula

$$\text{rate} = [8\% \times (\text{annual amount of bets placed} / \text{EUR } 30\,000\,000.00)].$$

5 - The rate calculated pursuant to indent b) of the preceding clause shall have a maximum limit of 16%.

6 - The difference between the amount calculated in accordance with clause 4 and the amount of the tax assessed monthly in accordance with clause 3 with reference to the same year shall be paid on or before 15 January of the year after that to which it refers, and the relevant tax collection notice shall be paid on or before the thirty-first day of the same month.

7 - The preceding clauses shall not apply when the fees charged by the operator are the sole revenue deriving directly from operating fixed-odds sports bets in which the gamblers play against each other and, in this case, the IEJO shall be levied on these fees at the rate of 15%.

8 - In the case provided for in the preceding clause, the tax shall be assessed monthly on or before the fifteenth day of the month after that to which it refers, and the relevant tax payment notice shall be paid on or before the last day of the same month.

9 - Of the amount of IEJO calculated in accordance with this article, 25% shall constitute revenue for the monitoring, inspection and regulatory body and 37.5% shall constitute revenue to be allocated to the entities

which are the subject of the bet to be divided among the clubs or the athletes, as the case may be, and the federation which organises the event, including leagues, if any, on the terms to be fixed in a ministerial ordinance of the members of government responsible for finance, sport and tourism.

10 - Without prejudice to Article 88(5), the net amount of IEJO, calculated in accordance with the preceding clause, shall be allocated as follows:

- a) 2.28% to the State;
- b) 34.52% to the Ministry of Solidarity, Employment and Social Security;
- c) 13.35% to the Presidency of the Council of Ministers;
- d) 16.44% to the Ministry of Health, of which 1% is earmarked for SICAD;
- e) 3.76% to the Ministry of Home Affairs;
- f) 1.49% to the Ministry of Education and Science.

11 - The amount of IEJO which is not divided in accordance with the indents of the preceding clause, equivalent to 28.16% of the net IEJO, shall be distributed in accordance with and in the proportion set out in the indents above.

#### Article 91

##### Special online gambling tax on horse racing

1 - In totalisator/paris mutual horse racing bets, the IEJO shall be levied on the gross revenue of the operator.

2 - The IEJO rate on the bets referred to in the preceding clause is 15%.

3 - Without prejudice to the preceding clause, when the annual gross revenue of the operator exceeds EUR 5 000 000.00, the taxable income shall be divided into two parts:

- a) up to the amount of EUR 5 000 000.00, the 15% rate shall be applied;
- b) the rate levied on the surplus amount shall be determined on the basis of the following formula

$$\text{rate} = [15\% \times (\text{annual amount of gross revenue}/\text{EUR } 5\,000\,000.00)].$$

4 - The rate calculated pursuant to indent b) of the preceding clause shall have a maximum limit of 30%.

5 - In fixed-odds horse racing bets, the IEJO shall be levied on the revenue from the amount of the bets placed.

6 - The IEJO rate on the bets referred to in the preceding clause is 8%.

7 - Without prejudice to the preceding clause, when the amount of the bets placed with the operator exceeds EUR 30 000 000.00, the taxable income shall be divided

into two parts:

- a) up to the amount of EUR 30 000 000.00, the rate of 8% shall be applied;
- b) the rate levied on the surplus amount shall be determined on the basis of the following formula:

$$\text{rate} = [8\% \times (\text{annual amount of bets placed}/\text{EUR } 30\,000\,000.00)].$$

8 - The rate calculated pursuant to indent b) of the preceding clause shall have a maximum limit of 16%.

9 - The differences between the amount calculated in accordance with clauses 3 and 7 and the amounts of the tax assessed monthly in accordance with clause 2 and 6, respectively, with reference to the same year shall be paid on or before 15 January of the year after that to which they refer, and the relevant tax collection notices shall be paid on or before the thirty-first day of the same month.

10 - The preceding clauses shall not apply when the fees charged by the operator are the sole revenue deriving directly from the operating of fixed-odds horse racing bets in which the players play against each other and, in this case, the IEJO shall be levied on these fees at the rate of 15%.

11 - In the case provided for in the preceding clause, the tax shall be assessed monthly on or before the fifteenth day of the month after that to which it refers, and the relevant tax payment notice shall be paid on or before the last day of the same month.

12 - Of the amount of IEJO calculated in accordance with this article, 15% shall constitute revenue for the monitoring, inspection and regulatory body and 42.5% shall be earmarked for the equestrian sector, on the terms to be fixed in a ministerial ordinance of the members of government responsible for finance, sport, tourism and agriculture.

13 - Without prejudice to Article 88(5), the net amount of IEJO, calculated in accordance with the preceding clause, shall be allocated as follows:

- a) 59% to *Turismo de Portugal, I.P.*;
- b) 40% to the State;
- c) 1% to SICAD.

#### CHAPTER VII

##### Miscellaneous provisions

#### Article 92

##### Fees

1 - Within the scope of application of the RJO, the following fees are payable:

- a) for the official approval of the gambling technical system;



b) for the issue of the licence;

c) for the extension of the licence;

d) for the authorisation to operate new types of games of chance.

2 - The proceeds from the fees provided for in the preceding clause shall constitute revenue for the monitoring, inspection and regulatory body.

3 - The amounts of the fees provided for in clause 1 and, where applicable, any exemptions and reductions, shall be fixed in a ministerial ordinance of the members of government responsible for finance and tourism, after a prior hearing of the monitoring, inspection and regulatory body.

## Article 93

### **Processing personal data**

1 - The provisions of the RJO shall not adversely affect the application to all the activities envisaged therein of the personal data protection legislation, namely Law No. 67/98, of 26 October, and Law No. 41/2004, of 18 August, as amended by Law No. 46/2012, of 29 August, including with regard to the exercise of the rights by the data-holders and the provisions on third-party access, in everything that is not legitimised by this present framework.

2 - The entities involved in online gambling and betting, including the operators and the monitoring, inspection and regulatory body, shall be subject to compliance with the principles and rules arising from the personal data protection legislation, as well as to monitoring and supervision by the National Data Protection Committee in the exercise of its legal powers.

3 - Any person who, in the course of their duties, becomes aware of personal data within the scope of the RJO, shall be bound by professional secrecy, even after their duties have ended, in accordance with Article 17 of Law No. 67/98, of 26 October.

4 - The entities referred to in this article shall keep secret the data collected about the tax affairs of the taxpayers and any information of a personal nature which they obtain in accordance with the provisions hereof, as set out in the General Taxation Law, approved by Decree-Law No. 398/98, of 17 December.

### SCHEDULE II

(to which Article 9 refers)

**Republication of Decree-Law No. 129/2012, of 22 June**