



# Brazil scores a winning goal with sports betting & igaming regulations

AFTER NUMEROUS TWISTS AND TURNS, LATIN AMERICA'S MOST POPULOUS COUNTRY IS OPEN FOR LEGAL GAMING BUSINESS. NEIL MONTGOMERY REPORTS

Where the Bolsonaro administration failed, the Lula administration has succeeded. Within 12 months of taking office Law No. 13,756/2018, legalizing fixed odds sports betting in Brazil<sup>1</sup> as a form of lottery, was passed. The Lula administration successfully managed to steer the bill through Congress (albeit with several bumps on the way) and the long-awaited regulations were enacted on 30th December 2023, as Law No. 14,790/2023.

For a market that, in 2022, generated BRL120 billion<sup>2</sup> in bets<sup>3</sup>, the Federal Government was eager to issue such regulations within 2023 and secure vital additional revenues to fund its social programs and strive towards a zero fiscal deficit in 2024.

This article provides a recap of the events of 2023 that culminated in this historic milestone in Brazil's gaming and betting legal framework. For more than eight decades games of chance have been outlawed. Now, we review the main elements of Law No. 14,790/2023 and indicate what to expect in 2024.

## 2023 in a nutshell

In January 2023, the Ministry of Finance, headed by Minister Fernando Haddad, invited São Paulo-based sports lawyer José Francisco Manssur to become Special Advisor to its Executive Secretary and to spearhead the drafting of the regulations for Law No. 13,756/2018. Manssur would have a colossal task in front of him: to interact with all public and private stakeholders for the regulations to be issued as soon as possible, since time was of the essence. His profile proved to be the right fit for the job. Regarded as a skillful lawyer and one who gets the job done, his experience working with government and having co-authored the text of Law No. 14,193/2021 (the Law of Football Corporations – S.A.F), provided the necessary credentials for the job.

After several months of interactions with the industry and Congress (including in relation to the format to be adopted for the regulations), the Federal Government decided to put forward, in July, two pieces of legislation, namely:

1. Provisional Measure No. 1,182/2023, which became effective as from the date of its publication in the Official Gazette (25th July) and provided a robust framework for

the regulation of fixed odds sports betting; and

2. Bill of Law No. 3,626/2023, which also proposed to amend Law No. 13,756/2018, insofar as fixed odds sports betting was concerned and to amend the legislation governing commercial promotions/sweepstakes (dating from 1971).

Since Congress viewed that it had to play a central role in the making of the legal framework, it decided to let Provisional Measure No. 1,182/2023 ultimately forfeit (on 21st November) and to focus on the processing of Bill of Law No. 3,626/2023, which was reformulated to include much of the contents of the Provisional Measure.

Bill of Law No. 3,626/2023 was approved by the Chamber of Deputies in September, which, pro-actively, included igaming in the legal framework (until then it had focused only on fixed odds sports betting). Such approval came while a Congressional Investigation (CPI) was underway into match-fixing in Brazilian football and which was interfering with the passage of the bill of law.

Later, in October, while Bill of Law No. 3,626/2023 was being reviewed by the Senate, the Ministry of Finance issued Normative Ordinance No. 1,330/2023, establishing general conditions for the operation of fixed odds sports betting in Brazil. It also invited future applicants for a federal license to submit their expressions of interest, with certain basic information and documentation, on the promise that operators filing the same will be granted priority in the review of their applications once the federal licensing process commences. 134 expressions of interest were received. In December 2023, the Ministry of Finance reached out to such interested operators confirming an "alignment" video conference for 10th January 2024 to kick-off a testing phase of the systems the Ministry had developed.

On 12th December, following fierce opposition by the so-called Evangelical Bench, which traditionally has opposed the legalization of games of chance in Brazil, the Senate approved Bill of Law No. 3,626/2023 excluding igaming and prohibiting the exploitation of online bets in video terminals at physical establishments. The Senate also included the requirement for future operators (which will have to be incorporated in Brazil and have their registered offices in country) to have at

<sup>1</sup> It is estimated that Brazil may be the world's third largest sports betting market, after the United States and the United Kingdom

<sup>2</sup> Currently equivalent to approximately US\$24 billion, taking into account a forex rate of USD1.00 = BRL5.00

<sup>3</sup> According to a recent study produced by Instituto Brasileiro Jogo Legal – IJL and the BNLData portal

least 20 percent of their share capital held by Brazilians. Due to the Senate having changed the original text approved by the Chamber of Deputies, the Bill of Law had to return to the Chamber of Deputies for deliberation, prior to being forwarded to President Lula for sanctioning.

On 21st December, Bill of Law No. 3,626/2023 was approved by the Chamber of Deputies with gaming being re-included, marking defeat for the Evangelical Bench (which, up to the last minute, tried to push the vote into 2024). Following the Christmas break, the approved consolidated text was sent to President Lula, who sanctioned the same with some vetoes that had been requested by the Ministry of Finance and will be further reviewed in this article. The bill of law became Law No. 14,790/2023 and was published in an extraordinary issue of the Official Gazette on 30th December. It is expected that this new federal law will be further regulated by a series of administrative ordinances (known in Portuguese as *portarias*), to be issued by the Ministry of Finance.

It is important to remember, however, that the legal framework for games of chance will only be complete when Bill of Law No. 442/1991, approved by the Chamber of Deputies in February 2022 and renumbered Bill of Law No. 2,234/2022 after reaching the Senate, which seeks to legalize land-based casinos and bingo parlors, as well as *jogo do bicho*, is enacted as a federal law. It was to be voted on by the Senate on 20th December 2023, but the session was cancelled, pushing the vote into 2024. The enactment of Law No. 14,790/2023 will certainly serve as a catalyst for moving this process forward after the Congressional Recess ends on 1st February 2024.

## Law No. 14,790/23: Main aspects

### 1. Scope

The law provides the general conditions for the exploitation of the fixed odds lottery within Brazilian territory where bets can be placed by individual bettors above the age of 18 (there being certain impediments applied to bettors) on:

- i. Actual sports-themed events that cannot exclusively involve minors, in which the outcome of the same is unknown at the time the bet is placed and which are conducted in accordance with the rules established by the national sporting organization under the Brazilian General Sports Law, or affiliated entities, or by sports administration organizations headquartered overseas; and
- ii. Virtual online gaming events, where online gaming is defined as the electronic channel making available virtual bets on games in relation to which the result is unknown at the time the bet is placed and is determined by the outcome of a future aleatory event, using a random generator of numbers, symbols, figures or objects defined in the rules system.

Besides fixed odds sports betting (the new law confirming that in-play bets are permitted), which have grown exponentially in Brazil since 2018, with the enactment of Law No. 13,756/2018, practically any online game in which the bettor knows what the return on the bet will be at the time it is placed will be considered to be lawful given that the definition provided for online gaming is quite broad. The Ministry of Finance will have to further regulate which online games fall within the above-mentioned scope.

### 2. Licensing

While the details of the licensing process are to be laid down by a *portaria*, the law confirms that licenses will be provided on a discretionary basis, under an open licensing model (where there is no limitation on the number of licenses that can be issued), for a five-year term and valid nationwide.

Applicants must be companies incorporated under Brazilian law and having their registered offices in Brazil. The requirement for having a minimum Brazilian share capital ownership of 20 percent was, unfortunately and unjustifiably, maintained, thereby constituting a potential market entry barrier to foreign operators. The law, however, is not precise as to what “Brazilian” entails, whether indeed it is a Brazilian national (individual) or a Brazilian corporate entity (i.e. one incorporated under Brazilian law and having its registered offices in Brazil). If the latter is acceptable, foreign operators (which continue to represent the majority accessing the Brazilian market) may have to add another corporate layer to their local corporate structures by first incorporating a local holding company to own the equity – or at least 20 percent of the same – in the local company applying for the license. If the latter is not the case, then, besides establishing a joint venture with a local, it may be possible to implement other legal structures to accommodate this legal requirement (such as, for example, splitting the share capital into voting and non-voting capital, with the Brazilian holding the latter).

The law also determines that the controlling shareholder



cannot, directly or indirectly, be a shareholder in a SAF (football corporation) or professional sporting organization, or form part of the management of a Brazilian sporting team.

The license fee to be set by the Ministry of Finance cannot exceed BRL30 million (payable within 30 days of the Ministry of Finance concluding its review of the application) and will cover up to three brands promoted by each operator. The license is also to be granted to a specific operator and may be reviewed upon the same undergoing a corporate transaction. It will also have to specify whether the operator is authorized to offer the fixed odds lottery in virtual or physical channels (or both). If at least the 134 operators who filed their expression of interest under the auspices of Normative Ordinance No. 1,330/2023 do indeed file applications for a federal license when available, this will generate more than BRL4 billion<sup>4</sup> in license fees for the Federal Government.

It is important to note that the law confirmed that while certain of its tax-related provisions are also applicable to fantasy sports, the exploitation of this (skill) gaming vertical (which for the first time in Brazil was adequately defined by law) would remain otherwise unregulated and not require a license (and may distribute cash prizes).

### 3. Advertising, bet integrity and player protection

One of the benefits of a regulated market is the introduction of adequate advertising, bet integrity and player protection requirements. These have been incorporated into the new law,

at least generally, to be further regulated in the Ministry of Finance's *portarias*.

Once federal licenses have been made available, only licensed operators will be permitted to continue to advertise nationwide. Advertisements should include notices discouraging gaming and warnings about health problems triggered by the same, besides observing applicable restrictions regarding times and marketing channels with a view to only targeting adults. The law also encourages autoregulation, which is why the industry has been in close contact with CONAR – the Brazilian non-governmental organization that self-regulates the advertising sector and which started 2024 by publishing its *Bet Advertising Rules*<sup>5</sup> and what a responsible gaming advertisement should look like.

The law also provides authority to the Ministry of Finance to notify companies – including Internet Service Providers (ISPs) – publicizing advertisements which violate the provisions of the law that they should be excluded. Judicial intervention will be required if such companies fail to exclude such unlawful advertising, which can include the blocking of websites as has been seen in 2023.

Operators will also have to implement bet security and integrity mechanisms and observe the Brazilian Data Protection Law (LGPD). In line with the findings of the above-mentioned match fixing CPI, the law also determines that operators will have to adopt match-fixing mitigation mechanisms, in addition to participating in a Brazilian or international sports integrity organization.

<sup>4</sup> Equivalent to approximately USD800 million when considering a forex rate of USD1.00 = BRL5.00

<sup>5</sup> [www.conar.org.br/pdf/conar-regras-apostas-folder-web.pdf](http://www.conar.org.br/pdf/conar-regras-apostas-folder-web.pdf)

In addition to expressly referring to the application of the Brazilian Consumer Protection Code (in effect since the 1990s and known to be one of the strictest in Latin America) to this new regulated market, the law set out certain basic bettor rights, which do not include the “right-to-play”, which has caused havoc in many other countries. As required in other Brazilian regulated markets, licensed operators will have to operate a free-to-use customer assistance service, in Portuguese, and register on the Federal Government’s online complaint platform [www.consumidor.gov.br](http://www.consumidor.gov.br).

#### 4. Taxation

One of the hottest topics since the enactment of Law No. 13,756/2018 has been taxation, both for operators and bettors. While the 2018 law was amended in 2021, Law No. 14,790/2023 now finalizes the discussion in relation to the GGR<sup>6</sup> tax rate payable by operators, although companies in Brazil are also subject to other taxes and contributions, which increase the effective tax burden. There may, however, still be discussion in relation to the tax bettors are to pay, since President Lula, as requested by the Ministry of Finance, vetoed the first three paragraphs of article 31 of the same which addressed the topic. This veto, in addition to three others, can be reviewed by Congress within 30 days after the recess ends.

##### *a. For bettors*

The caption of article 31, which was not vetoed, establishes that net winnings are subject to personal income tax (IRPF) at the rate of 15 percent (this is half the rate paid in respect of other forms of lottery). The veto excluded the definition of “net winnings”, which was the net value of the positive result obtained from bets placed each year, after deducting losses incurred from bets of the same nature in the same period. It also excluded the IRPF exemption threshold of BRL2,112.00 per month (amounting to BRL25,344.00 per year) and the methodology under which bettors would calculate and pay IRPF (only once a year)<sup>7</sup>. While the veto may be overturned by Congress in 2024, there would be legal arguments to sustain bettors may still benefit from the exemption threshold, although the time period for calculating and paying IRPF over net winnings would still need to be defined, probably by a *portaria*.

<sup>6</sup> Gross Gaming Revenue

<sup>7</sup> The vetoed paragraph established that the bettor would have to calculate the taxable amount annually in his/her annual tax return by the last working day of the month following the annual date on which taxable net winnings are ascertained

##### *b. For operators*

Law No. 14,790/2023 establishes that on the proceeds of the collection of bets after the deduction of the payment of bettor winnings and applicable IRPF, 88 percent will be applied to cover the operator’s costs and maintenance expenses.

In this regard, the balance of 12 percent is to be applied over GGR. The result will be allocated and extended to certain specific public sectors and entities including education, health, sports, public safety and social security.

In addition to the GGR tax, it is important to consider that Brazilian companies are subject to corporate taxation calculated according to the tax regime elected, which must consider the total expected annual turnover (annual turnover less than BRL78 million to be eligible the presumed profit regime or turnover equal to or above BRL78 million triggering the adoption of the actual profit regime).

Accordingly, subject to certain restrictions (i.e. where gross income does not exceed BRL78 million and depending on the activity), Brazilian companies have the option to calculate corporate income taxes (“IRPJ/CSLL”) using a presumed profit regime (i.e. PPM - Lucro Presumido). Under the PPM, income is calculated on a quarterly basis on an amount of gross revenue (based on the entity’s activities) and adjusted as determined by the prevailing legislation.

If the operator’s estimated turnover is expected to exceed BR78 million per year, it will be obliged to adopt the actual profit tax regime. In this regard, Brazilian corporate entities with an annual turnover of BRL78 million or more are subject to the following rates applicable to such actual profit regime.

- i. Corporate Income Tax (IRPJ) on their worldwide income annually. The basic rate is 15 percent accrued by a surtax of 10 percent on annual taxable profits exceeding BRL240,000.00.
- ii. Social Contribution on Net Profits (CSLL) is levied at a general rate of nine percent annually. The tax basis for IRPJ and CSLL are basically the same. Therefore, the total effective corporate tax rate is 34 percent (25 percent IRPJ [including the 10 percent surtax] plus nine percent CSLL).

- iii. Social assistance contribution (COFINS), which is a monthly federal social assistance contribution calculated as a percentage of revenue, is levied at the rate of 7.6 percent.
- iv. Contribution to the Social Integration Program (PIS), which is also a federal social contribution calculated monthly as a percentage of revenue, is levied at the rate of 1.65 percent.
- v. Municipal Service Tax (ISS - once in force<sup>8</sup>), monthly. The rates for this tax vary from one municipality to another and range between 2 percent and 5 percent.
- iv. Bets placed under match fixing schemes will be annulled;
- v. Operators will have to adopt facial recognition technology for player identification verification purposes;
- vi. Corporate groups with operators holding a federal license can only hold one state license;
- vii. Bonuses and other benefits extended to players are prohibited;
- viii. The law provides a list of infractions and applicable penalties.

Law No. 14,790/2023 maintains the Inspection Fee instituted by Law No. 13,756/2018. Therefore, operators will be subject to the monthly payment of the Inspection Fee ranging from BRL54,419.56 to BRL1,944,000.00, depending on monthly payout of winnings.

It is also important to note that a tax reform has begun following the enactment of Constitutional Amendment No. 132, of 20th December 2023 (starting with changes to taxes levied in relation to the provision of goods and services), to be implemented as from 2026 with supplementary legislation being required.

## 5. Other points of interest

Law No. 14,790/2023 also addresses many other topics, which could each be the subject of an article. These can be summarized as follows:

- i. The Ministry of Finance will grant six months for companies to adapt to the new legal framework;
- ii. Advertising in sporting events involving minors will be prohibited;
- iii. Payment service providers (PSPs) must be duly licensed by the Brazilian Central Bank and will be prohibited from conducting financial transactions for non-licensed operators;

## What to expect in 2024

2024 will certainly be a busy year for all stakeholders in the newly regulated market. The Ministry of Finance will start the year progressing the testing phase of the systems it has already developed with the group of 134 operators. It will also issue the *portarias* required to further regulate Law No. 14,790/2023 so that the market can become operational in the second half of 2024.

At Congress, in addition to the review of President Lula's vetoes, there is a good chance that Bill of Law No. 2,234/2022 will be approved thereby legalizing land-based casinos and bingo parlors, as well as *jogo do bicho*, thereby completing the regulatory cycle for Brazil.

The landing of foreign operators in Brazil should provide corporate lawyers with a lot of work, not only in the form of incorporating local entities to apply for the federal licenses, but also more complex transactions such as joint ventures and M&A. The local presence established by foreign operators will likely encourage disgruntled customers to take legal action against them in Brazilian courts, creating a first wave of consumer litigation.

This is the moment everyone has been waiting for. It is now time to kick-off a strong, regulated market and, hopefully, score some goals.



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<sup>8</sup> Although municipalities have already instituted ISS in their territories, a change in Supplementary Law No. 116/03 will still be necessary for this tax to be effectively payable by operators