

# Alert

## Fixed-odds bettings and the pathway to legalising gambling





On 25 July 2023, the Brazilian Congress published the Provisional Measure 1.182/2023 ("PM"). This PM amends Federal Law 13.756/2018 ("Fixed-Odds Betting Law"), which had created the fixed-odd betting as a type of public service lottery. Alongside the PM, the Brazilian executive branch presented Bill 3.626/2023 ("Bill") to the Brazilian Congress. The Bill also seeks to regulate specific aspects of the Fixed-Odds Betting Law. Both the Bill and the PM, but especially the latter, clarify the workarounds of the fixed-odd betting in Brazil.

Our Technology, Media and Entertainment law team prepared this alert to inform our clients about the changes introduced by the PM and the status of the current initiatives to legalise gambling in Brazil.

## IS GAMBLING LEGAL IN BRAZIL?

The short answer is not yet, but there have been recent developments on this matter. Gambling was not always illegal in Brazil. In fact, it was legal until the 40's, when there was a legislative shift introduced by the Law of Petty Offences (Federal Decree n. 3.688/1941) and the Federal Decree n. 9.215/1946), which prohibited all types of gambling, with a few exceptions (such as the federal lottery, promoted by the government). Bingos were briefly legalised again in 1993, through the Zico Law (Federal Law n. 8.672/93), but a ban ensued in the early 2000s.

Since then, the Congress has debated the issue and tried to tackle this prohibition, with no success. Lately, however, this scenario started to change.



## WHAT IS GAMBLING?

The Law of Petty Offences specifically bans gambling, or games of chance, defined in its article 50, §3 as: (i) games in which the victory or loss depends exclusively on luck; (ii) horse bets outside of authorised places or racetracks; (iii) betting over any other sports competition. This provision is still in force and has never been amended. Hence, this is the current legal definition in Brazil for 'gambling'.

It is worth noting that this definition of gambling enshrined by the Law of Petty Offences is broad. Accordingly, there are ongoing discussions about whether some types of games (for example, poker) fall under this definition.

## ARE SPORTS BETS LEGAL IN BRAZIL?

In 2018, former president Michael Temer signed the Provisional Measure n. 846/2018 which was later turned into the Fixed-Odds Betting Law. Despite the existing prohibition on sports

bet as enshrined in the Law of Petty Offences, the Fixed-Odds Betting Law created a new form of permitted lottery called fixed-odd betting, related to real sports-themed events. 'Fixed-odd' means that at the time of the bet, the gambler is informed about how much they can win if they correctly predict the outcome. This kind of gambling shall be regulated, and its operation will be dependent upon a specific authorisation from the Ministry of Finance, which will establish the applicable rules to grant such an authorisation. Nonetheless, the Ministry of Finance is yet to regulate the matter. Thus, the PM and the Bill are only an initial step in the structuring of a legal framework for the fixed-odds betting in Brazil. Even if the PM is approved, its enactment does not eliminate or preclude the need for further regulation by the Ministry of Finance.

The Ministry of Finance has been actively conducting public hearings on the matter. It has already made a public statement about the PM, in which it declared that 'the Ministry of Finance has been seeking modern and efficient systems, aligned with the most efficient in the world'.



Hence, one can argue that since 2018, fixed-odds bets are no longer considered to fall within the definition of games of chance. At the same time, however, these gambling games have also not been fully regulated by the Ministry of Finance. In this scenario, there is a grey area that incentivised gambling companies to start offering services in Brazil (especially sports bet apps), without the authorisation enshrined in the Fixed-Odds Betting Law. The turnover of these services is represented by the sector's growth, which went from R\$2 billion in 2018 to R\$7 billion in 2020.

**Before assessing the PM and the Bill, we highlight that (i) the PM still needs to be converted into law. If this does not happen within 120 days, the PM will lose its effects; (ii) until now, the PM received 244 proposals for amendments from senators and representatives from the Congress; and (iii) the Bill was presented to the Congress by the president with a request for expedite processing, but it is still in its early stages of processing.**

## WHAT WERE THE MAIN CHANGES ADVANCED BY BOTH THE PM AND THE BILL?

The PM and the Bill introduce changes to the Fixed-Odds Betting Law to establish taxation rules for this activity. (for more information on taxes on the PM, visit: <https://www.diascarneiro.com.br/en/alert/regulation-of-sports-betting-provisional-measure-1182-2023/>). Also, they aim to create specific rules for this business sector, including the establishment of administrative sanctions and the criteria for their application.

Below, we highlight the main changes introduced by the Bill and the PM with regards to sports bets:

### a. Who can operate activities of fixed-odds bets?

Any operation of activities of fixed-odds bets must be previously authorised by the Ministry of Finance ('MF's authorisation'). Only legal persons, established in the national territory and in compliance with the Ministry of Finance's regulations can obtain such authorisation.



## **b.. What are 'real sports-themed events'?**

To ensure clarity when applying the Fixed-Odds Betting Law, the PM precisely defines the scope of such betting. It enshrines that 'real sports-themed events' refers to 'events, competitions or acts that include sports competition, tournaments, games, or contests with human interaction, either individual or collective, excluding those involving exclusively underaged participants (below the age of 18), whose outcome is unknown at the time of the bet".

These events must be organised or promoted: (i) according to the rules established by the national sports governing organisation, as per the National Sports Law or by its affiliated organisations; or (ii) by sport's governing organisations established abroad.

## **c. Will the fixed-odds lottery be allowed to use the players' image, name, and nickname, as well as the teams' crest?**

**Yes**, the PM establishes that the Ministry of Finance will regulate the process for obtaining the authorisation so that all

operators of fixed-odds bets lottery can use the athletes' image, name, and nickname and other intellectual property rights, as well as the trademarks, crests, and anthems of the sports organisations. Moreover, the PM determines that there will be a transfer of proceeds from the fixed-odds betting to the entities of the National Sports System and to the national athletes linked to sports organisations established in Brazil.

## **d. Are there rules for marketing campaigns, advertisements, and communication of fixed-odds betting lotteries?**

**Yes**, this kind of marketing will also be subject to regulation by the Ministry of Finance.

In this regard, the National Council for Advertising Self-Regulation (in Portuguese, CONAR) can establish restrictions and rules in addition to those established by the Ministry of Finance. CONAR may also issue specific recommendations regarding marketing and advertising campaigns of fixed-odds betting lotteries.



We highlight that any marketing or advertisement by individuals or companies offering services related to fixed-odds betting lotteries on websites, without proper MF's authorisation, is prohibited. Therefore, advertising and marketing in this sector are highly restricted.

A similar ban applies to sports teams and athletes: the PM broadly establishes that sport's governing organisations shall include in their competition rules the prohibition for athletes and the teams to use names and trademarks of companies that offer or operate fixed-odds bets lotteries without the proper MF's Authorisation, in all its marketing properties where trademarks can be displayed.

**e. Are there rules applicable to the sports events that are the object of the bets?**

**Yes**, these events shall implement mitigation strategies to avoid manipulation of the results and corruption by the operators of the bets, as per the General Law of Sports and the regulation

to be passed by the Ministry of Finance. Moreover, the Bill aims to create a rule wherein the operation of fixed-odds betting lotteries is conditioned upon the implementation of policies and internal controls to prevent the manipulation of the sports events' outcomes and similar frauds.

**f. Can everyone place bets?**

**No**, the PM enshrines a list indicating the people who are banned from betting. Minors are prohibited from participating in fixed-odds betting lotteries, as well as anyone who:

- Has or can have access to the IT systems of the fixed-odds betting lotteries;
- Has or can have any influence over the outcome of the event object of the fixed-odds betting lottery, such as the sports coaches, anyone who is in the technical commission of a team, sports judges and their assistants, the athletes' or coaches' agents or representatives, members of the administrative or





supervisory bodies of a sports organization or competition organizer, and participants in competitions organized by entities within the National Sports System.

Although the PM prohibits various individuals from participating in fixed-odds betting activities, its wording shows a clear concern with possible manipulations in these betting activities and demonstrates an intention to curb frauds in this market.

**g. Which body will be responsible for accrediting and overseeing betting shops?**

The Finance Ministry will be responsible for registering and overseeing the operators of fixed-odds betting lotteries. Moreover, the operators shall report any suspicious event to the Ministry of Finance within 5 (five) business days of becoming aware of a possible manipulation event. In case the betting house refuses, omits, falsifies, or delays the provision of information or documents required by the Ministry of Finance in the scope of its supervisory activity, the betting house can

be subject to a daily fine of up to R\$10.000,00 (which can be increased up to 20 times).

**h. Will the betting houses be allowed to continue to negotiate rights over sports events in Brazil?**

**No.** The PM foresees that the companies which operate fixed-odds betting activities, as well as their subsidiaries and parent companies, shall not acquire, license, or finance the acquisition of rights over sports events that take place in Brazil for the purpose of broadcasting, dissemination, transmission, retransmission, reproduction, distribution, or making them available or in any way displaying their sounds and images, by any means or processes.

**i. Should the companies regulated by the PM fail to observe the established rules, will there be consequences, such as the imposition of administrative sanctions?**

**Yes.** The PM defines the following as administrative infractions:

# Alert



- Operating fixed-odds betting lotteries without prior authorisation from the Ministry of Finance;
- Performing operations in disregard to the authorisation granted;
- Imposing obstacles to inspections performed by the competent administrative body;
- Refraining from providing documents, data, or information to the administrative body, in disregard of the legal or regulatory rules;
- Providing incorrect documents, data, or information to the competent administrative body, or providing the information, documents, or data disregarding the established deadlines and conditions as per legal or regulatory norms.
- Marketing or advertising unregistered fixed-odds betting lottery operators;

- Violating legal or regulatory norms;
- Engaging in, encouraging, allowing, contributing, or concurring with practices which endanger or hinder the sports' integrity, the uncertainty of the outcome, the transparency of the rules applicable to the sports' event, the equality between competitors or any other type of fraud or unlawful interference.

Upon occurrence of any of the infractions listed above, the perpetrator shall be subject to heavy sanctions that vary from warnings to fines, revocation of authorisation, prohibition to partake in public tenders, amongst others.

We highlight, also, that one of the main goals of the Bill is a more delineated regulation of the disciplinary process. It establishes rules such as: (a) the possibility that the Ministry of Finance determines the application, in specific cases, of precautionary measures before or during the disciplinary process; (b) the possibility of suspending the disciplinary process before the first-instance review, in case the investigated person signs a





declaration whereby it undertakes to, concurrently, stop the investigated practice or its damaging effects, correct the identified irregularities, compensate for damages and fulfil other conditions agreed to in a specific case.

## **j. Does the PM apply to eSports?**

Based on its current wording, it is unlikely that the PM will apply to eSports. It remains unclear whether eSports championships and tournaments fall under the category of 'real sports-themed events' under the PM. The current language of the PM determines that the real sports-themed events shall be promoted and organised as per the rules enshrined by the national sports governing organisation or its affiliated entities, according to the General Sports Law.

However, after lengthy debates, the General Sports Law excluded the regulation of eSports from its scope.

It defines sport as 'any form of predominantly physical activity, either informally or organised, that aims at recreational

practices, promotion of health, elite sports performance or entertainment'. Consequently, as of now, the answer to the question is negative, but the issue is still under consideration by the Brazilian Congress.

Moreover, it is worth noting that fantasy games are specifically regulated by Bill 2.796/2021, the Games Legal Framework, which was already approved by the Chamber of Deputies, and it is now under consideration by the Senate. The main difference between fixed-odds gambling and fantasy games is that the latter is not based upon the real scores of real-life matches, but in their statistics. Thus, they require know-how and further skills to determine the winner.

**+** *For further information about the General Sports Law, check our alert*  
***"Legislative Update | Brazilian General Sports Law Is Sanctioned".***



## WHAT IS THE STATUS OF THE OTHER INITIATIVES THAT SEEK TO LEGALISE GAMBLING IN BRAZIL?

### a. Bill to legalise gambling was approved before the Chamber of Deputies

The Chamber of Deputies is currently assessing several bills that aim to legalise gambling. In February 2022, Bill 422/91 was approved by the Chamber of Deputies and is now awaiting review by the Senate. This bill seeks to legalise, under strict rules, some types of gambling such as casinos, bingos, video-bingos, online games, and horse betting. On 10 July 2023, Senator Jorge Kajuru (PSB) proposed some amendments to the bill, aiming to further regulate the gambling companies and to create measures to curb illegal operations by unauthorised agents.

There have been intense debates on the topic, and in April 2023, Senators created a parliamentary front against the legalisation of gambling. The future of this bill in Brazil remains uncertain.

### b. Ruling by the Supreme Court

Lastly, there is a case pending before the Supreme Court on the issue. The Extraordinary Appeal 966.177 addresses the constitutionality of Article 50 of the Federal Decree 3.688/1941, which criminalises gambling, vis-à-vis the constitutional principles of free initiative and personal freedom. The Supreme Court had scheduled to hear the case in April 2021, but withdrew it from its agenda at the last minute. Now, there is no alternative date set for the hearing. The case is under review by the rapporteur, after receiving third-party's requests to intervene as amici curiae (friends of the court).

# Alert

Considering all the above, we conclude that the legal framework for gambling in Brazil is changing.

Our team in Technology, Media and Entertainment law will continue to monitor this issue and keep our clients informed about any developments.



**EDUARDO TURKIENICZ**  
nic@diascarneiro.com.br  
T +55 3087 2112



**VANESSA PAREJA LERNER**  
vpa@diascarneiro.com.br  
T +55 3087 2159