

Alert

Brazil has approved a law regulating fixed-odd bets

What is the current legislative framework on the issue now?





On 30 December 2023, Provisional Measure 1.182/2023 expired, leading President Lula to sanction Law 14.790/2023. This law represents an important step towards the regulation of bets in Brazil, ending the heated debate before the Federal Congress on the legalisation of online bets (online casinos).

This law impacts all companies operating fixed-odds bets, agents who operate in this market, including financial institutions and payment intermediaries, and those who promote or advertise the market. Additionally, the law clarifies an old point of doubt: fantasy sports are expressly outside the law's scope.

This new law is incorporated into a broader legislative and regulatory framework for fixed-odds betting. Particularly, we highlight that the Law 14.790/2023 amended three different laws.

First, it changed the Law 13.756/2018 (Fixed-Odds Bet Law), which had been recently regulated by the Ordinance 1.330/23 of the Ministry of Finance ("**Ordinance**"). Moreover, it amended Law 5.768/71, introducing new rules on the free distribution of prizes for advertising purposes. Lastly, it also affected the Provisional Measure 2.158-35/2001, regulating the authorisation fees.

Importantly, the Provisional Measure 1.182/2023, which was similar to the Law 14.790/2023, has expired. Consequently, the laws and regulations mentioned in the previous paragraph are the ones regulating the fixed-odd bets market in Brazil.

Additionally, the Brazilian National Advertising Self-Regulation Council ("**CONAR**") issued Annex X ("**Annex X**") to its Advertising Self-Regulation Code, which introduced recommendations to advertisers in this market.



This alert aims to assist our clients in understanding the legislative framework vis-à-vis the new rules established by Law 13.756/2018, the Ordinance, and the Annex X. Below, we provide an overview of the main provisions of Law 14.790/2023, including the new obligations to the fixed-odds betting operator agents (“Agents”).

1. WHAT IS FIXED-ODDS BETTING?

Article 2 of the Law 14.790/2023 defines ‘betting’ as ‘an action by which a certain amount is put at risk upon the expectation of obtaining a prize’. The definition of ‘fixed-odds’ is ‘a multiplying factor of the amount at bet, that determines the amount to be received by the bettor, in case of winning, for each unit of national currency bet’.

The law 14.790/2023 also establishes the possibility of placing virtual bets through the access to websites or internet

applications managed by an Agent, or physical bets through the acquisition of printed tickets.

2. WHAT CAN BE SUBJECT TO FIXED-ODDS BETTING?

Law 14.790 establishes that fixed-odds betting can apply to: (i) real sports-themed events; and (ii) virtual events of online games.

It defines “real sports-themed events” as “*events, competitions, or acts that include sports competitions, tournaments, games, or contests, 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 (Law 14.597 of 14 June 2023); or (ii) by sports governing organisations established abroad.



Conversely, a "virtual event of online game" is an "event, competition, or act of an online game whose outcome is unknown at the time of the bet". The term 'online game' demands further explanation of its definition. The law defines "online game" as "an electronic channel that enables virtual betting in a game whose outcome is determined by a random future event, using a random generator of numbers, symbols, figures or objects defined in the rules". As such, it ultimately refers to online casinos or games whose outcome depends on a random result (luck-dependent), based on a pre-defined standard of auditable rules. The Ministry of the Finance is expected to further regulate this concept soon, and we will keep following the developments.

Events of online games can only be subject to virtual betting through websites or applications.

3. WHO CAN EXPLORE THE FIXED-ODDS BETS?

Fixed-odds betting can only be economically explored by Agents authorised by the Ministry of Finance. To obtain a license, Agents must be managed and headquartered within the national territory. Moreover, the companies must demonstrate their experience in gaming and meet other technical requirements established by the Executive Branch.

Law 13.790 also establishes that, within the Agents' shareholders list there must be at least one Brazilian shareholder holding at least 20% of the equity shares.

The Agents' shareholders or stakeholders cannot be executives, nor can they hold direct or indirect participation in sports entities.



4. IS THE MINISTRY OF FINANCE'S AUTHORISATION SUBJECT TO FEES?

Yes, companies will have to pay fees to receive the license. The amount will be determined by the Ministry of Finance.

agreements between the Agents and internet applications and/or the advertisers. Moreover, Law 14.790 establishes that promoting or advertising unlicensed Agents infringes the law. However, the Ministry of Finance is yet to regulate license application procedure. Thus, the law will only be infringed after this regulation. We will keep monitoring the situation.

5. WHAT THE ADVERTISING AND MARKETING RULES APPLICABLE TO COMPANIES EXPLORING FIXED-ODDS BETTING?

At the outset, we emphasise that the regulation of fixed-odds betting applies to: (i) companies engaged in the commercial exploration of the fixed-odds bets, referred to as Operator Agents; (ii) internet application providers offering virtual games to third parties; and (iii) companies that market the Agents or enter into agreements with them. For now, the latter two must remove unlawful content, which might affect existing

Law 14.790 outlines the general obligations for the Agents. Additionally, it establishes that the Ministry of Finance will regulate marketing and advertising campaigns. However, the existing Ordinance already enshrines some rules.





6. ARE THERE ANY OBLIGATIONS TO MONITOR THE BETTORS?

Yes. Agents have various obligations, including the establishment and implementation of:

- Measures to identify the bettors, adopting the minimum standards provided for by the regulation and using facial recognition technology; and
- Systems and procedures that adhere to the criteria and rules established in the law and in the Ministry of Finance's regulations to monitor the bettors' activity, aiming at identifying and curbing problematic gambling. This will also include the adoption of measures to timely limit the usage of the applications.

7. HOW DOES THE LAW 14.790/2023 SAFEGUARD THE RIGHTS AND INTERESTS OF MINORS?

Safeguarding minors is a clear concern of Law 14.790. Accordingly, it establishes that:

- Sports events of any sports discipline which includes youth categories or involves exclusively underaged athletes cannot be the subject to fixed-odds betting;
- Minors (below the age of 18 years old), even through an intermediary, cannot directly or indirectly gamble;
- Any marketing or advertising campaigns must target an adult audience. Marketing or advertising campaigns targeting children or teenagers are prohibited.
- Marketing or advertising in schools and universities is not allowed, as well as those campaigns targeting minors. Similarly, marketing or advertising of fixed-odds betting in any physical or virtual media is not allowed unless a rating notice is displayed, as per the Child and Adolescent Statute ('Estatuto da Criança e do Adolescente' – ECA).



8. ARE FINANCIAL INSTITUTIONS AND PAYMENT INTERMEDIARIES SUBJECT TO THE LAW 14.790/2023?

Yes. Financial institutions and payment intermediaries must not allow or enable transactions from unauthorised Agents. The Ministry of Finance shall regulate the deadline for the implementation of this prohibition.

Additionally, Law 14.790 establishes, amongst others, that only Brazilian institutions whose functioning is authorised by the Brazilian Central Bank may offer transactional or service accounts allowing the gambler, for example, to make deposits, withdrawals, and/or to receive prizes. Also, they must keep the records of all operations carried out in the transactional accounts.

9. DO AGENTS HAVE TO IMPLEMENT INTERNAL POLICIES AND PROCEDURES? WHICH?

Yes, the Law 14.790/2023 establishes as a condition to the securement and maintenance of operating licenses that Agents must adopt and keep policies and procedures targeted to the support of the betters, money-laundering, match-fixing and pathological gambling disorder, as well as promote responsible gambling and the integrity of the bets. Furthermore, the law establishes that the Ministry of Finance may regulate these obligations further. The Ordinance already prescribes some of the applicable norms to the Agents' internal policies and procedures.

In summary, Law 14.790/2023 translates and reinforces a regulatory effort that foremost aims to ensure the safety of users and the integrity of the sector itself. By implementing policies of responsibly gambling, limits to deposits and option of self-exclusion, it tries to reduce risks associated with addiction to gambling and uncontrolled financial losses by the end consumer.



Additionally, the emphasis on the implementation of procedures of risks assessment and communication of suspicious operations reinforces the responsibility of Agents to act proactively on the identification and reporting of potentially dangerous or illegal activities. This not only helps the prevention of financial crimes, but also ensures that the sector remains vigilant and responsible.

10. WHAT DOES THE LAW 14.790 PRESCRIBE ON FANTASY SPORTS?

Law 14.790/2023 explicitly excludes fantasy sports from the scope of fixed-odds betting. Fantasy sports are electronic sports in which disputes happen in an online environment, based on the performance and ability of real people, where (i) the virtual teams are composed of at least 2 (two) real persons, and the performance of the teams depends inherently on the knowledge, analysis, statistics, strategy and ability of the fantasy sport's players; (ii) the rules are previously established; (iii) the guaranteed amount of the prize does not vary according to the amount of players or the

earnings of the subscription price; (iv) the outcomes do not stem from the result or the isolated activity of only one individual in a real competition.

Although the Law 14.790/2023 explicitly excludes fantasy sports from its scope, Article 31§4o regulates the taxation of the prizes given in this type of sport, as further explained below.

11. HOW WILL THE BETS BE TAXED?

Law 14.790/2023 establishes a 15% personal income tax on the net value of prizes obtained by individual gamblers, which is also applicable to fantasy sports.

Contradicting the previous rule by the Provisory Measure 1.182/2023 (see our alert <https://www.diascarneiro.com.br/en/alert/regulation-of-sports-betting-provisional-measure-1182-2023/>), prizes up to R\$2.112,00 are not exempt from taxation.



The Agents' revenue will be subject to a 12% taxation. This percentage is applicable to the amount obtained after deducting the prizes and the equivalent income tax due. The collected tax will be allocated to specified destinations, according to Law 14.790/2023, including contributions to Social Security.

There will also be the imposition of a monthly inspection fee, in accordance with the revenue generated from the bets.

Further regulation by the Ministry of Finance will address the provision and submission of economic, financial, and accounting information for inspection.

12. WHICH PLAYERS CANNOT PLACE BETS?

As previously explained, minors (below the age of 18 years old) cannot place fixed-odds bets. Moreover, the following categories of people are also prohibited from gambling: those diagnosed with gambling disorders; those who might influence sports events or the platforms for online games; sports directors, coaches, referees, agents, athletes and the alike.

The Agents must reinforce these prohibitions in its advertising material, as well as in its physical and virtual venues.



13. WHAT ARE THE SANCTIONS THE LAW ENSHRINES?

Violations will be investigated through an administrative procedure. Some of the infractions to the law include, among others: (i) operating fixed-odds bets without an authorisation from the Ministry of Finance, or in disagreement with the granted authorisation; (ii) hampering or hindering inspections by the competent administrative authority; and (iii) advertising or marketing unauthorised fixed-odds bets Agents.

These violations subject the offender (either legal or natural persons) to serious sanctions, varying from a simple warrant to fines from 0,1 to 20% of the revenue or, whenever it is not possible to ascertain the revenue, a fine from R\$50.000,00 (fifty thousand reais) to R\$2.000.000.000,00 (two billion reais) per infraction. Other sanctions include absolute or partial suspension of the activities, license revocation, prohibition of obtaining a new license for 10 years, or of participating in public procurement processes for 5 years, amongst others.



Ordinance 1.130/23 of the Ministry of Finance



At the end of October 2023, the Ministry of Finance published an Ordinance on the general rules for the commercial exploitation of fixed-odds betting houses in the national territory. Below, we outline the main points of the document:

1. WHO CAN COMMERCIALY EXPLOIT FIXED-ODDS BETTING HOUSES?

Only legal entities duly established in the national territory and licensed by the Ministry of Finance can run fixed-odds betting houses. To obtain a license, the legal entity must comply with the Ordinance, the Law 13.756/2018, and other regulations in force.

- The ordinance also establishes instances in which licences will not be granted. For example, no natural persons are eligible for

licensees. Similarly, legal entities whose individual or collective controlling shareholders or partners, directors and other individuals within their corporate structure: **(1)** hold a direct or indirect interest in a Football Public Company or a professional sports organization; or **(2)** act as professional athletes, technical staff, referees, or officials of a Brazilian sports team; or **(3)** have been convicted of crimes such as tax evasion, administrative misconduct, passive or active corruption, or dereliction of duty, are not allowed to operate as fixed-odds betting agencies.

2. WHAT ARE THE REQUIREMENTS FOR A COMPANY TO COMMERCIALY EXPLOIT FIXED-ODDS BETTING?

The Ordinance outlines various requirements to be observed by legal entities seeking to explore fixed-odds bets. Amongst them: **(1)** their main corporate purpose must be the exploration



of fixed-odds bets; **(2)** their platform for sports gambling must observe the technical and operational requirements defined in a specific law and be certified by a lab duly recognised by the Ministry of Finance; **(3)** they must implement policies to prevent match-fixing, money-laundry, terrorism financing, and the proliferation of weapons of mass destruction.

Furthermore, the Agent must appoint individuals responsible for the following areas within the company: **(1)** accounting; **(2)** data security; **(3)** ombudsman; **(4)** operational security of the betting system; and **(5)** compliance and integrity. Individuals cannot hold more than one role at the same time.

The Agent shall obtain the bettor's authorisation to process their personal data, as well as a confirmation that the bettor acknowledges the betting house's prizing policies.

3. WHICH INFORMATION SHOULD THE BETTOR BE PROVIDED WITH?

The Agents must provide clear information about the bets, so that the bettor can adequately comprehend the platform's functioning, the criteria for winning, and: **(1)** how the bettors can place their bets; **(2)** the fixed-odds for each bet; **(3)** the place and form of prize collection **(4)** the bettor's account balance; **(5)** the Agent's contact information, including name, email, and telephone.



4. WILL THE AGENTS HAVE TO IMPLEMENT INTERNAL POLICIES AND PROCEDURES? WHICH ONES?

Yes. Among the main directives, the Ordinance establishes that Agents must: **(1)** establish internal policies to promote responsible gambling, including limits on deposits, options for self-exclusion and tools to assist clients to manage their game behaviour; **(2)** monitor bet patterns to detect and prevent manipulation of results or other related fraudulent activities; **(3)** establish anti-money laundering and terrorist financing policies, including rules on risk management for operations subscription, third-party engagement and the alike; **(4)** establish criteria and implement procedures to identify its clients, the final beneficiaries, third-parties, and related parties; **(5)** implement procedures to identify, monitor and assess risks, and to communicate operations with evidence of money-laundering, terrorism financing, or the proliferation of weapons of mass destruction to the competent authorities; **(6)** establish and execute a continuous training programme targeted to disseminate the culture and qualification of its employees, partners and service providers with regards to these issues.

5. WHAT ARE THE AGENTS' OBLIGATIONS CONCERNING GAMBLING DISORDER? DO THEY HAVE AN OBLIGATION TO PROMOTE RESPONSIBLE GAMBLING?

Agents must promote responsible gambling and implement measures to discourage gambling disorder. As such, they must only allow the placing of bets and prize distribution for adults of legal age. Furthermore, the bettors' registration must contain, at least: **(1)** their full name; **(2)** date of birth; **(3)** national ID or passport number; **(4)** individual taxpayer registry number ("CPF") or the equivalent document for foreigners.

Regarding measures to prevent pathological gambling, the Ordinance mandates that Agents implement internal mechanisms allowing the bettor to establish **(1)** a daily time limit for gaming or a limitation on the amount of the bet; **(2)** the maximum amount for losses; **(3)** a period for pausing; and **(4)** the possibility of auto exclusion.



Also, there are restrictions to some forms of payment. The Agents cannot **(1)** accept cash, third-party deposits in the bettor's account, or payment instruments that offer a postpaid payment account to the bettor; or **(2)** generate proposal invoices.

6. ARE THERE PROHIBITIONS TO THE ADVERTISING AND MARKETING OF FIXED-ODDS BETS?

No. However, the Ordinance regulates the advertising and marketing campaigns of fixed-odds bets, enshrining various restrictions to it.

Amongst others, the Ordinance prohibits advertising and marketing activities that: **(1)** are broadcasted or take place in schools or universities; **(2)** do not contain an age restriction notice; **(3)** convey misleading statements on the chances of winning or the expected gains; **(4)** present gambling as socially attractive or suggest that it contributes to personal or social

success, or to improving the bettor's financial condition; and **(5)** constitute an appeal to intensify or exaggerate the practice of betting.

Moreover, the Ordinance prohibits marketing activities that suggests or induces bettors to believe that (1) gambling is a sign of virtue, courage, maturity or in any way associated to personal or professional success; (2) abstaining from gambling is an act or sign of weakness or associated with negative qualities; (3) betting can solve the bettor's social, professional, or personal issues; (4) betting can replace the bettors' employment, resolve their financial issues, or serve as a source for additional income or investment; and (5) the ability, dexterity and/or experience of the bettor can influence the outcome of a bet.

Lastly, fixed-odds betting advertisements must contain a warning on the potential harms of gambling.



Annex X to the Brazilian National Advertising Self-Regulation Council (‘CONAR’) Advertising Self-Regulation Code (‘Code’)



On 29 December 2023, CONAR published the Annex X to its Code.

The Annex applies to all forms of advertisement conducted within the context of gambling activities. Specifically, it applies to all content intended to stimulate the consumption of goods and services, promote brands, marks, websites, Agents, or companies as provided for in the Code ("Advertising" or "Advertisement"). The regulation does not extend to sponsorship contracts and to operational and commercial policies of companies, even if their advertising actions fall within the scope of Annex X rules.

Essentially, Advertising practices must be conducted in a socially responsible way. Advertisements that incite or incentivise pressure to gamble, to exaggerate or to repeatedly bet, or encourage irresponsible gamble are not prohibited.

Below, we present an outline of the main rules provided for in Annex X.

- **Principle of the identification of the advertiser:** the advertiser responsible for the Advertising must be clearly identifiable, even when the campaign is carried out by influencers. The identification must be legible and easily accessible. This rule applies to all communication channels, including social media. We emphasise that whenever the advertising activity is performed by influencers, Annex Q to the Code is also applicable.
- **Principle of accuracy and information:** The Advertisement must contain accurate information and must not include promises that the bettor will win, that the bet's outcomes are certain, or that the gains are guaranteed or high. The identification of the odds of winning, its associated risks



and, possible earnings must comply with CONAR's rules. The Advertisement must include, amongst others, the indication of the Agent's license, the values (in Brazilian reais, only) for playing, the established fixed-odds, information on tax incidence and other applicable fees and deductions. Advertisers can consider the inherent limitations of each Advertisement channel to determine which information can be inserted, provided they offer bettors an easily accessible channel to access the complete information.

- **Principle of minors' protection:** Includes several rules to safeguard this vulnerable audience. Amongst them, it prescribes that the Advertisement must indicate the age rating as 18+, and all people in the piece of Advertisement must look like they are over 21. Also, the piece of Advertisement cannot be inserted in channels targeting minors.

- **Principles of social responsibility and responsible gambling:**

These rules impose restrictions to prevent the induction of problematic gambling. For instance, the Advertisement must not present that gambling can bring social, sexual, professional, or financial success, promote or encourage excessive gambling, or exploit feelings of fear or suffering.

- **Warnings:** Subject to few exceptions, all Advertising must include a standardised warning to inform the public about the likely impacts of the activity and to improve the bettors' ability to make rational and informed decisions to reduce excessive gambling. There are eight standardised messages, and a future regulation will determine which one will be applicable on a case-by-case basis.

Our team at Dias Carneiro will continue to follow the legislative and regulatory developments of these issues and will inform our clients in case there are any developments.



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