

Regulatory Framework for Gambling in Brazil: legal, political, economic and social aspects for its legalization



Ever since gambling was forbidden in Brazil, the topic of re-legalizing the activity has been on and off the agenda of the various administrations.

Today a new regulatory framework for gambling is part of the Federal Government's agenda. More than that, as an important tool to help boost the economy and raise tax revenue in a moment of crucial need, it tends to gain further support in Congress and face less resistance from those who have traditionally opposed it.

In this memo we address the following topics regarding gambling legalization in Brazil: (i) **gambling regulation background**; (ii) the main bills under discussion in Congress; (iii) the Interministerial Committee for promoting investments in tourism sector; (iv) Brazilian political and economic scenarios; (v) the discussion about casinos operation; (vi) Brazilian lotteries; and (vii) the status of online games in Brazil.

Gambling Regulation Background:

From 1920 to 1946 gambling was permitted in Brazil and the country had great casinos and job opportunities in elegant entertainment centers with restaurants, bars, ballrooms, and theaters. In April of 1946,

President Eurico Gaspar Dutra issued a Decree prohibiting gambling and casinos operation in Brazil.

Dutra had political and personal reasons to end gambling in Brazil: he wanted to eliminate all measures implemented by previous President

Getulio Vargas (responsible for encouraging the operation of casinos in the country) and he was married to a fervent catholic woman, completely averse to the environment of the gambling halls, casinos and theatrical spectacles.

At the time of prohibition, the interdiction had a strong economic effect in Brazilian cities that lived mainly from tourism based on gambling, such as Petrópolis, in Rio de Janeiro and Poços de Caldas and Lambari, in Minas Gerais.

Currently, even with the express ban on the exploitation of gambling, Brazil deals with its illegal practice, mostly in houses where bingo and betting machines are operated.

Legislative Proposals:

There are today two main bills of law being discussed in Congress to try to implement and regulate gambling in Brazil: **Bill 442/1991 from the House of Representatives** and **Bill 186/2014 from the Senate**. Both Bills legalize gambling and allow casinos to operate in Brazil, but there are relevant differences between the two proposals with regards to investment and business opportunities that would come out of their approval into law.

Despite the difference in the legislative process and status of the bills in both chambers of Congress, there are groups of congressmen pushing forward or obstructing the advance of the theme.

As an example of the strength of the group in favor of the legalization, in May 2019, a **Joint Parliamentary Caucus for the approval of a Regulatory Framework for Games in Brazil** was installed.

Small steps were taken, but there was no compromise between both houses to approve the bills or guarantee guidelines to the text. On the bright side, it means this is an **excellent opportunity** for foreign companies to share their best practices and engage in a debate to help set the new standard in Brazil and explore this market.

Our assessment is that the regulatory benchmark has to contemplate legal, social and political defense, based on minimum standards, including: clear rules for the gambling operation defining the permitted games, tax rules, financial traceability and protection against money laundering,

prevention of ludopathy addiction, compliance rules, and international control mechanisms.

It is very important to engage and actively participate in the process of opinion-making to a better design of a regulatory framework. Depending on the interests that will prevail, the result may be a fair, compliant legal environment or not.

The Ministry of Tourism and the Interministerial Committee for opportunities in the tourism sector:

On May 14th, President Bolsonaro issued **Decree n. 10.349/2020** adding to the Government Program for Investment Partnership a group to assess policies for **attracting private investments to the tourism sector aimed at the implementation of new business ventures on this sector and the tourist use of cultural and natural Brazilian assets**. One of the purposes is to have an Interministerial Committee establishing priority for investments and assessing regulatory alternatives to encourage and promote private investments, providing legal certainty to the players, and analyzing possible socioeconomic impacts.

This Interministerial Committee is composed by some nominee member of the Ministry of Economy, Tourism, and Environment. Those appointed agents are responsible for assessing the opportunities for the tourism segment which represents a great convenience to engage with the public authority to lobbying for the inclusion of some great investments, as **casinos** and **gambling legalization**. Researches on this option have already been made by those public offices, a topic considered at the beginning of Bolsonaro's government in 2019 by political actors from the Legislative and Executive branches.

This Interministerial Committee has been meeting periodically for about a month and the project decisions will be analyzed by the Government Program for Investment Partnership. One of the topics under discussion is the **integrated resort casinos**, enabling the activity of casinos as an increment to the resorts, which are expected to be implement until 2023.

In a macro-political landscape, we observe a group in favor of legalizing gambling activities and others against it, but available to discuss and adjust points-of-view according to market demands.

Political and economic scenarios:

The political and economic scenarios around the legalization of gambling modalities in Brazil also have those in favor and those against its

advance. The keynote address of those against is a conservative point of view based on the social impact that it could cause. On other hand, in favor there are those who believe gambling may improve economic numbers.

President Jair Bolsonaro is influenced by both groups. Despite suffering resistance in some of his ministerial core - we can mention **Minister Damares Alves**, evangelical and conservative who has already announced her position against all gambling operations -, one of President Jair Bolsonaro's sons is highly favorable to the theme. **Senator Flávio Bolsonaro (Republicanos/RJ)** was in an official mission and met with important players of the gambling sector to discuss the possibility of allowing casinos in Brazilian territory. He is considered an important adviser in the Administration.

It is well known that with the Coronavirus pandemic Brazilian economy suffered great impacts on the tax collection that tends to get worse. The ministerial staff is assessing all economic options, but it is already stated that Brazil must redraw priorities and adopt alternative legal remedies to expand tax collection.

The **Minister of Economy Paulo Guedes** is known for his liberal and reformist approach, as well as his proximity to idealists at the University of Chicago, where he earned a Ph.D. in economics.

He had some changes in his staff recently: the Secretary of the National Treasury, Mansueto Almeida; the President of Banco do Brasil (financial institution with government participation), Rubem Novaes; one of his closest Secretaries, Caio Megale; the Secretary of Privatization, Salim Mattar; and the Secretary of Debureaucratization, Paulo Uebel, the last two names resigned on the same day, August 11. In particular, Mansueto Almeida was responsible for building a good and close relationship with Congress and widely acquainted with the country's fiscal reality. Salim Mattar and Uebel had a great interference on the government's privatization agenda.

These resignations may have an impact and weaken economic policies that this Government is trying to implement, in particular those dependent of Congress approval.

The great pressure to increase spending to mitigate the impacts arising from the coronavirus crisis can have a major impact on the political structure around the President, especially in the relationship between the economic team and the Government, paving the way for greater entry of "**centrão**".

The group named as "centrão" is an informal group of congressmen from different political parties who support the government in exchange for being part of choosing nominations. It has a more conservative base,

largely composed of evangelical congressmen, and they are characterized as more spenders, responsible for presenting and defending projects to increase spending. The leaders of "centrão" are moving to guarantee even more space in the main economic agendas and work side by side with the President, interfering in economic policies.

On other hand, one of the biggest obstacles to the approval of a new Regulatory Framework for Gambling in Brazil is the **evangelic caucus**, a group of congressmen with great expressiveness in the Legislative branch.

The evangelic caucus represents one of the pillars of the current Government and one of the reasons why the President was elected to his current mandate. It represents conservative values and believes that the practice of gaming goes against good customs and traditional Brazilian family. This group represents a good part of the President's supporters.

Therefore, the discussion of approving the operation of some gambling activities in Brazil goes through a possibility of convincing this group to change their opinion or, at very least, compromise and remain neutral during the discussions.

The fiscal situation is one of the points to be reassessed by the current Government and the Congress. With the weakening of the Ministry of Economy (with the departure of part of his staff and the profile of Paulo Guedes before Congress), more conservative in spending, there is a space to be fulfilled by "centrão", showing their influence on setting the priority agenda.

Estimates of revenue loss during quarantine period demonstrate a gap in Brazil's revenue. To recover it, the Government is studying mechanisms for expanding tax collection and had already submitted part of a tax reform.

Games activities appear as one of the viable alternatives that can expand collection, promote jobs, and attract foreign investments. In the current scenario, the project could be considered of economic urgency to accelerate its assessment.

Resorts infrastructure for casinos operation:

The possibility of implementing **integrated resort casinos** is under discussion at the Interministerial Committee for opportunities in the tourism sector.

With regard to the infrastructure required for the construction and operation of casinos, the bills of law under discussion share different approaches, one with a more complete and comprehensive regulation and another with illustrated details. The new legislation enforces that they

must operate in hotel complexes imposing high requirements on the gambling players.

The **House Bill** establishes important requirements as far as gambling surrounding infrastructure, such as a minimum number of hotel rooms, commercial, meeting, convention, sports, recreation and dining areas, clubs, and space to accommodate the machines.

The **Senate Bill** does not establish such requirements and allows for a few companies operating the casinos to provide this entire infrastructure (hotel infrastructure, restaurant, convention area, shows, and concerts).

The examples of infrastructure and casino rules are in the current draft of the bills. Adjustments and revisions may be made during the assessment of the houses, under a legal and political process within the legislative process.

It is under discussion the establishment of centers of **hubs** to casinos operation. The imposition of creation of **hubs** may be important since the demand is concentrated in certain locations as opposed to some types of games that face great resistance (such as the “jogo do bicho” - animal game) and spread quickly throughout the national territory.

In a competitive aspect, this can be faced as an entrance barrier, but it is important to attract the right investments and companies. It is possible to advocate with lawmakers for regional tax incentives and differentiated taxation for the development of those regions directly affected by the hubs.

Those hubs may also expand the tourist potential of some Brazilian regions, like the Northeast. Major players have already shown interest in investments and projects aligned with the Government to raise the level of tourism in Brazilian regions. Gambling provides a differentiated type of tourism, in which Brazil is very interested in. As a reminder, tourism is one of the priority development agendas for this Administration.

On other hand, there is a big concern from private investors that the Tourism Ministry may allow only one casino (as an integrated resort) to operate in Brazil, in only one city. This would be prejudicial to the legalization of gambling modalities as it limits operations in Brazil.

Lotteries:

The current legislation determines that the lottery is an exclusive public service and the Ministry of Economy is responsible for authorizing or granting its exploitation. Federal Law 13.756/2018 authorizes sports

betting to operate, but it is still waiting for a regulation setting important procedures.

The preparation of a regulation Decree has been underway since 2019. The Ministry of Economy promoted public consultations to discuss drafts of regulation.

The third and last Public Consultation closed in March 2020, motivated by the change in the service's exploitation model as a public concession, and is under discussion by the Ministry's staff. There is an intention to finish the regulation by the end of this year.

Also, there is a clear effort by last and current Governments to open this market, as the federal lottery is operated by Caixa Econômica Federal since 1962.

In October 2019, the sale of the Exclusive Instant Lottery (**Lotex**) was completed, with a complicated process, and is expected to be launched by the winner consortium until January 2021.

Recently, the qualification of fixed-rate bets (**sports betting**) was included in the National Privatization Program. It is in its initial phase (studies to support the investment).

There is an expectation that regulation of sports betting may pave the way for the legalization of other types of games, but we have to wait until it is finished to assess its real impact in this whole sector.

Online games:

Although international online gaming sites (those hosted outside Brazil) are freely available in the country and gamblers do not face legal proceedings against its practice, this modality is not allowed. If legalized, the new legislation could provide security to the gambler and attract investors interested in developing online games in Brazil.

Although bills aforementioned address questions of online games, there is a possibility of a separate regulation for this modality. In this scenario, there is a Senate Bill specifically on electronic sports and a House Parliamentary Caucus in favor of Electronic Games.

Senate Bill 383/2017 aims to regulate electronic sports practice (limited to activities that use electronic devices, in which two or more participants compete, using round-robin tournament systems, knockout systems, or any other similar technology for the same purpose). We have noticed engagement of the private sector some congressmen in order to make great changes in the current text under discussion. Since the end of 2019 this Bill has not had significant progress in the Senate.

In addition to this, the **House Parliamentary Caucus in favor of Electronic Games** was officially created in late 2019 and installed in March 2020. It aims to support e-Sports, but with the Congress activities reduced during the quarantine it did not have significant advances, and the event launching the Caucus had no engagement from the private sector.

In 2019, the **House's Sports Committee had a special subcommittee to assess online gaming and gambling aspects**. Despite its installation, the subcommittee had not promoted meetings.

Due to all of this, online games are one of the discussion items under the legislative agenda. Despite of that, there is no consensus on a text to move forward with its regulation.

The new regulatory framework for online games has to find a balance between a legislation hard enough to restrain money laundering and attract investments and allow the development of new interested companies. Public supervision is important, and also economic and social aspects must be considered to create appropriate legislation and guarantee wide access to online games. In this context, it is also important to discuss suitable taxation of these games to promote fair and transparent tax collection.

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In the Fausto Macedo blog, at Estadão media, Fernanda Burle and Bárbara Teles, partners of the firm MJ Alves and Burle Advogados e Consultores, wrote an opinion column ensuring that it is possible and plausible to resume the discussion for the

implementation of casinos in Brazil and legalization of some of the gambling activities to boost the economy and job creation at such a fragile time in the country's history. Read the full text of the lawyers.

<https://www.gamesbras.com/english-version/2020/5/28/there-is-safe-way-to-legalize-gaming-and-mitigate-the-economic-crisis-in-brazil-17670.html>



The concession of sports lotteries demonstrates, once again, the Government's intention to rethink the exploitation of the gaming sector games in Brazil, in its different modalities and formats. As part of an investment attraction agenda, the concession will provide the best exploitation

of this type of bets (games of chance and games of skill), with the opportunity to use the best and safest international practices, say lawyers Marcos Joaquim Gonçalves Alves and Bárbara Teles in an opinion column for local news outlet Estadão.

<https://www.gamesbras.com/english-version/2020/7/20/sports-lottery-the-first-step-to-open-the-gaming-sector-in-brazil-18456.html>

About the firm

MJ Alves e Burle Advogados e Consultores – Advocacy Brasil (MJAB) is the first Brazilian law firm specialized in Advocacy. The firm advocates for organizations and companies on governmental matters in Brazilian Congress and Administration.

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Brazil's chapter in 2018, 2019 and 2020 on Getting the Deal Through – Government Relations

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