



CHAMBERS
Global Practice Guides

Gaming, Gambling and Licensing

Law and Practice – Israel

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Herzog Fox & Neeman

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ISRAEL

LAW AND PRACTICE:

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

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ISRAEL LAW AND PRACTICE

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Herzog Fox & Neeman's Gaming Department is a global leader, recognised as such by the industry worldwide. Unique to the Israeli market, the Gaming department is comprised of its own dedicated team which works in tandem with other professional departments to evaluate every issue from a relevant viewpoint. The Gaming department

provides a full range of services to its clients, including licensing, regulatory, tax, commercial and e-payments, as well as co-ordinating and assisting in the implementation of public offerings and other exit strategies. The department regularly receives worldwide recognition for the quality of its ever-increasing stable of industry leading clients.

Authors



Meir Linzen heads HFN's Taxation Department and co-heads the Internet, E-Commerce and Gaming Department. He has been ranked senior statesman in the gaming industry and is an iconic figure who has, since the 1990s, main-

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Yehoshua Shohat Gurtler is a partner in HFN's Gaming Department and heads the department's regulatory, licensing and compliance team. He advises clients on a range of issues related to the law of online gaming, concentrating primarily on

matters pertaining to licensing, regulation, compliance and lobbying. In addition, Yehoshua advises clients on other aspects pertaining to the regulation and licensing of e-commerce, with a specific focus on Forex trading, binary options, etc. Following extensive service in the IDF's Military Advocate General's Corp (MAG), Yehoshua advises and represents clients on issues pertaining to public international law.

1. Types of Gaming

1.1 Types of Permitted Gaming

Israel has always been a restrictive jurisdiction with respect to gaming. The Israeli Penal Law 5737-1977 outlaws all forms of lotteries, betting and games of chance, as well as various associated activities, such as operating venues where prohibited activities are organised. There are presently only three exceptions to the blanket ban on gaming and gambling: the national lottery, limited betting activities organised by the Israel Sports Betting Board (ISBB) and a limited scope of "social gambling."

Israeli law permits the establishment of a national lottery (*Mifal Hapayis*) that operates under a licence from the Israeli government and offers scratch cards, a subscription lottery and various other draws and raffles. The lottery was also permitted to operate a limited number of video lottery terminals (VLTs), but the future of this activity is now under discussion. The lottery may only offer its services offline, through a network of franchises and licensed distributors.

The ISBB ("Toto Winner") was established by law and has the exclusive right in Israel to offer betting (online and of-

line) on a specific list of sporting events. In recent years the ISBB was also granted the right to offer betting on select international sporting events and horse races; however, the future of the latter offering is under discussion.

Finally, the Penal Law exempts a limited scope of "social gambling" from the general prohibition on gambling and betting. To qualify for this exemption, an activity must be intended for a certain circle of persons, may not exceed the scope of amusement or entertainment and may not be held in "a place of prohibited games or a place for the conduct of lotteries or betting." Israeli courts have interpreted the exemption narrowly. Specifically with respect to online gambling, courts have emphasised the first of the three conditions; ie, restriction of a game's target audience to a certain circle of persons (see, for example, Criminal Appeal (Supreme Court) 9140/99 Amos Romano v The State of Israel).

1.2 Types of Prohibited Gaming

Other than the three types of gaming listed in **1.1 Types of Permitted Gaming**, all forms of lotteries, gambling and betting are strictly prohibited under Israeli law. Israeli courts have interpreted this blanket prohibition as applying irrespective of whether the activity is terrestrial or online.

2. Regulation of Gaming

2.1 Regulating Types of Permissible Gaming Activities

The primary source of law regulating gambling and betting in Israel is Chapter 12 of the Penal Law 5737-1977, titled Prohibited Games, Lotteries and Betting.

Section 321(A) of the Penal Law authorises the Ministry of Finance to permit the operation of the national lottery. The latest such permit was issued on 14 February 2017 and is valid through 31 December 2021. The permit is subject to conditions imposed by the Ministry of Finance that govern the operations of the national lottery for the permit period.

The Law for the Regulation of Sports Betting 5727-1967 regulates the operations of the ISBB. Various betting programmes operated by the ISBB are governed by specific regulations issued by the ISBB itself, in accordance with its statutory powers.

2.2 Enforcement of Prohibitions on Gaming Activities

As noted above, the blanket prohibition on gambling and betting is contained in Chapter 12 of the Penal Law. Proposed legislation pending before the *Knesset* (the Israeli legislature) would authorise the Israel Police to instruct ISPs to block access to online gambling and betting sites.

Furthermore, Israeli financial and credit institutions are subject to Conduct of Banking Business Procedure No 411, issued by the Bank of Israel. Procedure 411 imposes strict restrictions on Israeli financial institutions in relation to transactions related, inter alia, to online gambling.

3. Licensing of Operators

3.1 Licensing Standards

As noted, the only forms of legal gambling and betting in Israel are those organised by the national lottery and the ISBB. The national lottery operates under a renewable permit issued by the Ministry of Finance and the ISBB operates in accordance with a specific authorising statute.

3.2 Applying for a Gaming Licence

Given the monopolistic nature of gambling and betting in Israel, there is no open licensing process for such activities. Individuals and businesses wishing to distribute the products and services of the national lottery or ISBB may apply for a franchise, which may be granted by either body.

3.3 Limits on the Number of Licences

The national lottery and ISBB determine the total number of available distribution franchises in accordance with for-

mulae dictated by the law and by the lottery's permit. The franchises are distributed geographically based on various criteria (such as population size, socio-economic conditions, etc).

3.4 Social Responsibility Requirements

The national lottery's permit requires that it maintain a responsible gaming policy. Inter alia, the policy requires the national lottery to invest an annual sum in research on problem gaming and on the social impacts of gaming. The lottery is required to invest 3.5% of its annual marketing budget in campaigns related to responsible gaming and the detection, prevention and treatment of problem gaming. In addition, the lottery must invest an annual sum in providing treatment for problem gamblers. The lottery is required to post information on its website and at sale points regarding the risks associated with gambling and the treatment available for problem gamblers. Finally, the lottery must conduct its sales and marketing in accordance with the ethical and responsible gaming principles adopted by the World Lottery Association.

3.5 Licensing Requirements for Employees of Operators

Concessionaires and distributors of gambling and betting products and services may not be under 18 years of age. They must post a financial surety to guarantee their compliance with the terms of the concession and must participate in responsible gaming training.

3.6 Restrictions Placed Upon Each Type of Licence

The lottery and the ISBB may only offer those types of games or betting activities specifically authorised in the lottery permit or under regulations issued by the ISBB respectively.

3.7 The Term of Each Type of Gaming Licence

The present lottery permit is for a five-year (renewable) period. The ISBB's statutory right to conduct betting is not limited in time.

4. Operational Requirements

4.1 Types of Permitted Games

The national lottery may offer the following types of games: keno, weekly draws, a subscription lottery and scratch cards.

The ISBB may offer fixed odds betting on a specified list of national and international football, basketball, handball and tennis matches.

4.2 Establishing the Rules of the Games

The rules of the national lottery's offering are defined in its permit. The rules of the ISBB's betting activities are defined

in regulations issued by the Board under its statutory authority.

4.3 Physical Requirements for Gaming Facilities

The number and location of lottery points of sale and concessionaires is defined in the national lottery's permit, and is determined by various demographical considerations (including the socio-economic profile of various geographical areas). Points of sale may not be located less than 500 metres from middle schools or high schools.

4.4 Limitations Upon the Advertising of Gaming Facilities

The following restrictions apply to the advertising of gaming products and services.

- Advertisements may not be broadcasted on television or radio between 3pm and 9pm.
- Advertisements may not glorify gambling or be of such nature as to invite or encourage persons to gamble.
- Advertisements may not be directed at educational institutions, broadcasted on television channels targeting minors or on or adjacent to television shows intended for minors, printed in newspapers or publications intended for minors, shown on websites intended for minors, distributed on media intended for minors, using characters or symbols identified with youth culture, or portraying minors, youth role models or celebrities whose activities are focused on youth culture.
- Advertisements may not:
 - (a) directly link gambling activity with the social works undertaken using lottery funds;
 - (b) encourage players to gamble beyond their means;
 - (c) present a false guarantee of winnings;
 - (d) present gambling as a means of easing financial, social or personal hardship;
 - (e) present gambling as an alternative to work, financial investment or as a way of achieving financial security;
 - (f) portray gambling as an essential service or as being more important than family, friends or professional activity;
 - (g) portray gambling as a means for recovering previous gambling losses;
 - (h) suggest that the likelihood of winning may be increased through skill or experience;
 - (i) link gambling to significant life changes;
 - (j) encourage unlawful or immoral behaviour; or
 - (k) encourage consumption of alcohol; etc.
- Gambling products must be accompanied with standardised risk warnings.

4.5 The Issuance of Credit

Credit may not be issued for gambling and players may not pay for gambling or betting services in installments.

4.6 Exclusion of Certain Players

Gambling and betting services may not be provided to minors.

5. Monitoring and Enforcement

5.1 Record Keeping Requirements

The lottery and ISBB are subject to standard record-keeping requirements in accordance with international financial reporting standards.

5.2 Filing Reports

The lottery is required to issue publicly an annual audited report regarding its activities, including various financial and operational information about its revenues, expenses, the scope of activities conducted, return-to-player rates, etc.

5.3 Internal Controls and Procedures

The lottery is required to appoint an internal controller and to conduct routine audits by external independent auditors.

5.4 Monitor Activities of Licensees

The Ministry of Finance monitors the activities of the lottery through reports and audits conducted internally and by external auditors. The Ministry may conduct inspections with regard to the lottery's activities at any time and may instruct the lottery to conduct internal reviews or subject itself to independent reviews at any time.

The operations of the ISBB are monitored by the Board in accordance with its statutory powers.

5.5 Imposition of Fines, Sanctions or Disciplinary Action

The primary enforcement tools available to the regulatory authorities are suspension or revocation of the national lottery's permit and suspension or discontinuation of specific types of permitted gambling activities. The Ministry of Finance may also suspend marketing campaigns that are not consistent with the terms imposed by the lottery's permit.

6. Taxes and Fees

6.1 Taxes and Application, Issuance, Investigation or Other Fees

The profits of the national lottery are distributed for various public works and good causes in accordance with the lottery's permit (primarily the construction and maintenance of educational institutions). A significant proportion of the national lottery's profits are distributed to local governments.

The ISBB's profits are distributed to sporting unions, leagues and teams, or invested in the construction and maintenance of sporting facilities.

7. Foreign Gaming

7.1 Requirement for Approval of Gaming Authorities

In accordance with the jurisprudence of Israeli courts, the promotion of foreign gaming services to persons in Israel is prohibited and persons physically present in Israel may not participate in gambling or betting activities conducted outside Israel (for example, over the internet). The ISBB may offer betting on a limited scope of international sporting and horse racing events, as approved by the Board from time to time.

8. Trends

8.1 Changes to Gaming Legislation or Regulations

Recent years have seen several attempts by political parties and government committees to promote the establishment of at least one casino in Israel. However, the most recent attempt by the Israeli government (in 2016) to study the rami-

fications of establishing a limited number of casinos in Israel appears to have been abandoned due to political objections.

Proposed legislation has been introduced in the *Knesset* seeking to empower the Israel Police to instruct ISPs to block access to online gaming sites. The fate of these proposals (which are strongly opposed by the ISPs themselves) is uncertain.

Finally, in early 2017 the Minister of Finance rescinded the national lottery's authority to operate a limited number of VLTs. The decision has been judicially challenged by the lottery's concessionaires and the matter is pending before Israel's Supreme Court. The Minister of Finance has also announced his intention to rescind the ISBB's permit to conduct wagering on the results of foreign horse races.

On a related matter, the Israel Securities Authority found in 2016 that the "gambling-like" characteristics of binary options render this instrument ineligible for licensing under Israel's securities laws. A draft bill circulated by the Authority in early 2017 seeks to codify in law the prohibition on offering trading in binary options to Israeli residents and to prohibit Israeli companies from operating binary options trading platforms intended for non-Israeli end users. This legislative proposal is under consideration by the Israeli government.

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