
Online Gambling Platforms Bill

Legal flash Santiago de Chile

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On March 7, 2022, the government presented a bill aiming to regulate gambling platforms in Chile (the “Bill”) in Bulletin Nr. 14838-03.

Specifically, the Bill aims to regulate online gambling platforms (the “**Platforms**”), which cannot operate under current law as they are not expressly authorized. The gambling industry legally authorized to operate in Chile mainly consists of (i) casinos, (ii) racetracks, (iii) Polla de Beneficencia (Chilean state-owned company, authorized to conduct gambling activities), and (iv) Lotería de Concepción (part of the Universidad de Concepción and also authorized to conduct gambling activities).

In addition to developing a flexible regulatory framework, the Bill aims to (i) create a more competitive market; (ii) protect the users of these Platforms; (iii) safeguard public trust; (iv) enhance transparency of the origin and allocation of the resources obtained in this activity; (v) and increase tax revenue.

If it becomes law, the Bill will be supplemented with a regulation, and oversight will fall to the Superintendency of Gambling Casinos, which will be renamed the Superintendency of Casinos, Betting and Gambling.



Objectives of the Bill

- > **Create a more competitive online gambling market**
- > **Safeguard public trust**
- > **Protect players' health and safety**
- > **Increase tax revenue**
- > **Enhance transparency of the origin and allocation of the resources obtained through these Platforms**

Content of the Bill

- > **Gambling is the core of the regulation, and the Platform is its medium.** The Bill makes a distinction between “betting,” “gambling” and “online gambling,” highlighting that the essential feature of gambling is that it entails the possibility of financial gain or loss. The Bill restricts the gambling medium to “Online Gambling Platforms,” using a broad definition so that it will cover other platforms that may arise in the future as technology develops.
- > **Authorized gambling events.** The Superintendency will decide which gambling events are authorized. That authorization will not include lotteries; those containing or transmitting graphics, sounds or messages undermining public order, national security or the honor of individuals; those directed at minors; and any other content that could seriously harm users' health or their physical or mental development.
- > **The Act applies to all Platforms that allow gambling from Chile.** Irrespective of the location of the infrastructure supporting the operation, the operating system or the web domain, **Platforms allowing one or more users to gamble from the Chilean territory will be considered to operate in Chile.** Only Platforms that hold a general or special license, meet the technical requirements to be outlined in the regulation and comply with the regulator's instructions will be able to carry out online gambling in Chile.
- > **Operating licenses. Corporations incorporated in Chile for this exclusive purpose** can apply for an operating license. There will be two types of license granted under a non-competitive procedure. The first is a **renewable, five-year general license, and the other is a non-renewable, special online gambling license for 60 calendar days.**
- > **Regulation and oversight of the online gambling market.** These functions are assigned to the Superintendency of Gambling Casinos, which will become the **Superintendency of Casinos, Betting and Gambling** (the “Superintendency”).



- > **Protection of users and minors.** The Bill outlines several rules to help protect users and minors, e.g., **(i)** it requires a guarantee covering possible closure of a Platform to ensure that users will have their funds reimbursed; **(ii)** it sanctions those who manipulate gambling events to obtain financial profits or losses for themselves or third parties; **(iii)** it prohibits granting any type of loan to users; **(iv)** it applies restrictions on opening a gambling account, including prohibiting minors from doing so; **(v)** it establishes restrictions on advertising and promoting Platforms.
- > **Promoting responsible online gambling.** The Ministry of Finance will prepare a national responsible online gambling policy. The Superintendency will be responsible for promoting responsible online gambling. Furthermore, operators will allocate 1% of their gross annual revenue to promoting responsible online gambling.
- > **Preventing illegal gambling.** Operating these Platforms without the required license will be considered an administrative infringement and a criminal offense. Similarly, only Platforms that hold an operating license can be advertised, which the medium must certify. Failure to do so will be an infringement subject to sanction by the Superintendency.
- > **Oversight and sanctions on Online Gambling Platforms operators.** A risk-based oversight system is envisioned, which will be supplemented by using means similar to those that Act 19995 currently offers the Superintendency to supervise casino operators. The Superintendency will have remote access to the Platforms to monitor every action taken on them. Finally, the Bill outlines minor, serious and very serious sanctions for breaching the regulation, both for users and for Platform operators or third parties.
- > **Taxation and fees payable by Online Gambling Platforms**
 - Platforms offering betting in one or more national or international sports competitions, relating to one or more sports and modalities recognized by the Ministry of Sport must allocate **2% of their gross annual gambling revenue** to the national governing body of the sport in question, the Chilean Olympic Committee or the Chilean Paralympic Committee, as applicable. Gross revenue will mean the total online betting amount within a period, **minus the prizes paid out during that period.**
 - **Specific 20% tax**, replacing the Sales and Services Tax (VAT), **on the gross revenue obtained by companies with licenses** to operate Platforms.
 - **Annual levy**, for each calendar year or fraction of it, **of 1,000 UTM (Monthly Tax Units, a currency unit used for paying taxes and customs, payable in Chilean pesos)**¹, for each **general Platform operating license** in use.

¹ 1 UTM: USD 70 approximately (calculated as of March 10, 2022)



- **Levy of 100 UTM** for every **special Platform operating license** authorized.
- Users will pay a **15% tax, as a single tax replacing income tax**, on the income obtained in Online Gambling Platforms prizes. This tax is payable every time funds are withdrawn from a user's account.

> **Amendments to other regulations**

- **Act 19995:** The Superintendency of Gambling Casinos changes its name to the Superintendency of Casinos, Betting and Gambling and is granted oversight and control over Online Gambling Platforms. Moreover, the regulator is authorized to create a register of unauthorized Platforms and to promote responsible online gambling.
- **Decree Law 1298:** To ensure a level playing field, it sets out that Polla Chilena de Beneficencia, like any other operator, must request authorization from the Superintendency, although it is granted a transitional system for eight years to adapt its system to the new regulations, while it holds a general license during that period.
- **Act 19913:** Platform operators holding a general operating license must also report transactions that raise money laundering suspicions.
- **Act 18568:** If their governing bodies find it appropriate, Lotería de Concepción and Polla Chilena de Beneficencia are authorized to apply for the licenses to operate as Online Gambling Platforms. They are, therefore, allowed to enter this market on a level playing field.

- > **Validity of the Act.** The Act is set to enter into force once the regulation, which must be issued within 180 days of the Act being published in the Official Journal, is published. The first period for granting licenses will have exceptional rules, including a 60-day window to apply for general licenses and a two-year period during which general licenses cannot be applied for, in an attempt to consolidate the industry.

For additional information on the contents of this document, please get in touch with your usual contact at Cuatrecasas. If you do not have one, you can contact the following lawyers specializing in this area.

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