



ICLG

The International Comparative Legal Guide to:

Gambling 2019

5th Edition

A practical cross-border insight into gambling law

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CEO
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Group Consulting Editor
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Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
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Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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Spain



Patricia Lalanda Ordóñez



Fernando A. Martín Martín

LOYRA Abogados

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	The Directorate General for the Regulation of Gambling (<i>Dirección General de Ordenación del Juego</i> – “DGOJ”), part of the Ministry of Finance.	The relevant authority within the competent Autonomous Region, of which there are 17.
	Poker		
	Bingo		
Betting	Betting	DGOJ.	Not regulated yet.
	Sports/horse race betting (if regulated separately to other forms of betting)		
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)		
Lotteries	Lotteries	The Spanish State.	The relevant authority within the competent Autonomous Region. See above.
Social/Skill arrangements	“Social” gaming with no prize in money or money’s worth	Not regulated, as long as the game does not imply any profit for the promoter or operators.	Not regulated, as long as the game does not imply any profit for the promoter or operators.

Relevant Product	Who regulates it in digital form?	Who regulates it in land-based form?
Social/Skill arrangements	Skill games and competitions with no element of chance	Not regulated.

1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

Gambling activities in Spain can be divided into the following categories:

- “public gambling”, which is a State monopolistic activity entrusted to two incumbent operators, SELAE and ONCE, which are in charge of managing a series of passive, deferred, result-type lottery games and sport and charity pool betting; and
- “private gambling”, made up of licensed private operators, who are subject to an intense regulatory burden and which comprises all other types of gambling (land-based and online).

The Spanish Constitution divides regulatory and other powers over a series of matters between the central State and the Autonomous Regions (*Comunidades Autónomas*) (“Regions”). The Regions have taken on the regulation, authorisation, taxation and supervision of private and public gambling activities within the scope of their respective territories.

Any State-wide gambling offering is subject to the competence of the Ministry of Finance and General Government. Within the same, the Directorate General for the Regulation of Gambling (*Dirección General de Ordenación del Juego* – “DGOJ”) regulates, authorises, supervises, controls and, if necessary, penalises gambling activities in the Spanish State. Hence, it has competence over private and public online gambling offered in more than one Region.

Gambling is understood to be any activity involving risking sums of money, or items of economic value in whatever form, on future and uncertain results which depend to some degree on chance, and which allow these sums to be transferred between the participants, regardless of whether the level of skill of the players has a decisive impact on the results, or if the results depend wholly or fundamentally on luck, stakes or chance. The prizes may be in cash or in kind, depending on the type of game. Any activity falling within this definition is subject to specific gambling legislation. Social games are commonly understood to have no cash or economic-value prizes; hence they are not considered as part of this definition.

Common legislation for land-based and online gambling

Gambling operators and activities are subject to the relevant laws governing the environment, zoning, advertising and anti-money laundering, in addition to gambling regulation and taxes.

*Land-based gambling***a) Casinos**

Each Region has established a licensing regime to install and operate casinos. Usually, whenever a certain Region intends to grant a licence for a new casino, it must call and conduct a public tender, where applicants submit their proposal, which must comply with the requirements of the tender in terms of investment size, technical and financial suitability, location, potential for employment creation, guarantees, feasibility study, etc. The licence is granted to the applicant who attains the best score according to a scale provided in the tender. Typically, the total number of casinos that can be authorised within a concrete Region, as well as the number of casinos that can be operated by the same operator (and its group of companies), are limited.

Once the licence to install the casino has been granted, the applicant must obtain the authorisation to operate it, which is not transferable. However, transfers of ownership of the applicant/operator are permitted, provided the Region is notified or, in some Regions, approved.

Generally, any company that intends to operate a casino must be duly incorporated in Spain, have a certain minimum share capital and have the operation of casinos as its primary business purpose. Shareholders, directors and top-level management need to undergo a suitability analysis and comply with regulatory requirements.

In the last few years, both the Regions of Madrid and Catalonia have approved legislation framing the licensing of “integrated resort”-type casinos to be installed and operated in their territory.

b) Bingo halls

Regions have passed legislation for the installation and operation of bingo halls, including many requirements as to registration with the competent authority, incorporation and corporate purpose, and the provision of financial guarantees. In addition, bingo hall operators must comply with filing requirements related to employees and obtain authorisations for transfers of ownership or variations in the terms and conditions of the licence. Over the past few years, electronic and inter-connected bingos have been regulated in several Regions. Bingo halls may also, under certain conditions, operate Type B machines.

c) Sports betting

Regarding sports betting, regulation is variable across the Regions and sports betting terminals and counters can only be installed in certain gambling locations. Dedicated sports betting locations may also be opened in certain Regions.

d) Gambling machines

Manufacturers and distributors must comply with legislation regarding the physical characteristics of the machines, amounts wagered, prize payout statistics and locations where each type of slot machine may be placed. In certain Regions, transfers of ownership interest in machine manufacturers and distributors are subject to prior authorisation or notification to the relevant Region.

Registration and homologation of each machine model is mandatory. Additionally, each machine must be labelled with the name of the manufacturer and the relevant operating permit. Moreover, machine manufacturers, distributors and operators must register with and be approved (in terms of technical, reputational and financial suitability and compliance) by the gambling authority of the Region in which they intend to conduct business. Machine operators are also required to deposit financial guarantees which vary across each Region and must keep records and documentation related to the machines they

operate. In addition, there are regulations on the types of locations at which machines can be installed and the number of machines that can be placed in each of them.

Regulations refer to three general types of machines: Type A (amusement only – although excluded from Directive 123/2006/CE); Type B (amusement-with-prize – “AWP”); and Type C (casino-type). There are sub-types and other classifications that are omitted herein for the sake of simplicity. AWP machines installed in bars are the most common (maximum payout: €500).

Multi-position machines, and the possibility of linking them in certain locations and under a number of requirements, are generally allowed in the Spanish Regions and may offer larger prizes (i.e. the highest is €80,000 in the Madrid Region for bingo).

e) Gambling arcades

Regional laws and regulations have some differences, but the key requirements for the grant of a licence for the operation of gambling arcades are the following: (i) registration with the regional registry as a gambling arcade operator (including a statement as to the machine type(s) that are intended to be installed); (ii) a specific gambling arcade licence; (iii) provision of financial guarantees; (iv) municipal licences for the operation of the location of the gambling arcade; (v) communication to the competent gambling authority of any change in the information supplied; and (vi) in some Regions, annual or monthly reporting of key information.

f) Regional lotteries

The Regions may also regulate public gambling activities (lotteries) that take place within their respective territories.

Online gambling operations – State level

Online gambling is regulated by Law 13/2011, of 27 May 2011, on the regulation of gambling (“Law 13/2011”), which applies to the offering of gambling via interactive means both from Spain and to Spain.

There are three types of general licences: “bets”; “contests”; and “other games”. In addition, the online gambling verticals that can be offered via a singular licence are as follows: “bingo”; “blackjack”; “roulette”; “baccarat”; “slots”; “poker”; “complementary games”; “fixed-odds betting”; “fixed-odds sports betting”; “sports pool betting”; “fixed-odds horse betting”; “horse pool betting”; and “exchange betting”. If not comprised within the latter definitions, they cannot be offered.

Law 13/2011 has been implemented with the approval of a long set of regulations (Royal Decree 1613/2011 on technical requirements, and Royal Decree 1614/2011 regulating licences, authorisations and gambling registers), resolutions (technical, regulatory implementation, procedures and responsible gambling) and ministerial orders (one for each type of gaming vertical, i.e. singular licences).

Currently a new tender has been called (Ministerial Order HFP / 1227/2017 published in the Official State Gazette of 16 December 2017); this third call for tender carries various amendments to the previous ones, but the most relevant is the one-year period for submission of documentation and applying for the general licences (the submission deadline is Monday 17 December 2018, at 1:00 p.m.).

2 Application for a Licence and Licence Restrictions

2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

Please see question 1.2 above.

2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

Licences are granted by compliance with a certain framework that is predefined in applicable laws and regulations (from the competent Regions or the central State, as the case may be) and, thus, any applicant interested in the grant of a licence will know *a priori*, with a significant degree of legal certainty, if he/she has the capabilities (and suitability) to comply or not.

Prospective licensees, apart from specific requirements related to each type of gambling type or gambling location licence, generally need to meet the following conditions: (1) personal compliance requirements; (2) registration with the relevant gambling registry; (3) deposit of financial guarantees; and (4) compliance with tax and social security obligations.

2.3 What is the process of applying for a Licence for a Relevant Product?

Land-based gambling

Please see question 1.2 above.

Online gambling – State level

As described above, at least two licences must be applied for (general and singular licence). General licences are granted via an open public tender (no limited number of licences, to date) that contains requirements regarding technical, financial, reputational compliance, software security and reliability requirements, and anti-fraud and anti-money laundering requirements. A company which seeks to obtain a licence must, among many other requirements, be a public limited company or limited liability company, with the company address in a European Economic Area (“EEA”) Member State (“MS”), which has the sole corporate purpose of organising, marketing and operating gambling activities.

- Process financial obligations: among others, meeting the fees related to the regulated gambling activity, which are: €38,000 for technical reports; €2,500 for registering each licence; and €10,000 for each gambling licence.
- Technical obligations: among others, creating a specific website under an ‘.es’ domain; redirecting to the specific website under an ‘.es’ domain; and implementing an internal monitoring system to capture and register gambling operations and financial transactions in Spanish territory.
- Timing: once the application is submitted, there is a maximum period of six months to award the licence (or not). This term can be increased due to certain legal circumstances. Licences will be granted provisionally and from this moment gambling operation may begin, with the commitment to submit, within a period of four months, the final report of the gambling technical systems certification.

A guarantee in cash, real estate mortgage, insurance or security for an amount of €2,000,000 for general betting and other games licences or €500,000 for contest general licences must be set. The amount of the guarantees is reduced from year two onwards.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

A licensee will not be granted a licence or it will be withdrawn if it or its management get involved in certain circumstances related to, e.g., crime, bankruptcy, failure to comply with the State or Regions’ gambling regulations, tax, or Social Security obligations, etc.

2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

Land-based gambling

- Casino: 10–15 years, renewable for the same periods of time.
- Gambling machines: five-year renewable term.
- Gambling arcades: (depending on the Region) the licence may be indefinite, e.g. Andalusia; or limited to 10 renewable years, e.g. the Canary Islands.
- Bingo halls: (depending on the Region) the licence may be indefinite, e.g. Andalusia; 10 years, e.g. Valencia; or five years, e.g. the Canary Islands.
- Sports betting: Madrid and Valencia – 10 years; and Andalusia and Basque Country – indefinite.

Online gambling – State level

General licences: valid for 10 renewable years. Singular licences: valid for three to five years, depending on the type of game. The licences will be annulled in the following cases: a) by express waiver from the licence holder; b) if the validity period elapses; and c) by termination by the DGOJ for a number of reasons.

Regulators supervise, inspect and monitor licensed gambling operators as to their compliance with licensing requirements, and respond to breaches by giving directions, imposing penalties or, at the limit, revoking the gambling operator’s licence.

2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

Common restrictions on land-based and online gambling

There are certain groups of people who are restricted from gambling; among others, minors (under 18 years old), people who have been declared disabled by law or judicial resolution, and people who have voluntarily requested that their access to gambling be prohibited.

Depending on the Region, gambling arcades can be limited in number (e.g. Basque Country) and/or a minimum distance imposed between each other or to youth and learning facilities (e.g. Castilla y León), except for the Madrid, Extremadura and Asturias Regions, which have no limitations, including limitations regarding size. Likewise, the opening hours are different depending on each Region and on each type of gambling facility. This is also the case for bingo halls, which are subject to regulations on size, number, location and opening hours, with the exception of the Madrid and Extremadura Regions.

Currently, credit to gambling patrons is generally prohibited under Spanish law.

Online gambling

Only residents from the Region’s territory can play on regional online gambling webpages. State-wise, Law 13/2011 does not prohibit non-residents to play in an ‘.es’ gambling webpage or app against a Spaniard, but it is the operator’s obligation, in compliance with other jurisdictions’ gambling regulations, to block players’ IPs from jurisdictions where gambling is prohibited for their residents.

Advertisements

Regarding State-wide online gambling activities, to carry out gambling activities on audio-visual programmes, news media or websites, operators must have authorisation. The applicable rules are: (i) the general Law 34/1988, on publicity, and others that do not make an express reference to gambling; (ii) the code of conduct of

AUTOCONTROL, which is not mandatory; and (iii) the existing provisions of Law 13/2011, in particular articles 7 and 8, as well as several provisions contained in regulations that develop Law 13/2011.

The code of conduct sets, among other things, broadcasting timetables, and recommends technical measures such as size, pixels and velocity which the adverts should have, messages that must be shown, such as “play with responsibility”, and a link to the webpage <http://jugarbien.es>.

At regional level, general publicity regulations apply as well. Although traditionally very strict in the Regions, gambling advertisements have been liberalised or subject to prior administrative authorisation.

Promotions such as bonuses are accepted for online gaming. These have traditionally been forbidden for land-based gaming; however, legislation is changing towards liberalisation, depending on each Region.

2.7 What are the tax and other compulsory levies?

Generally, gambling taxes are imposed on the operator, i.e. the person or entity holding the relevant gambling licence. Manufacturers and distributors are not subject to gambling tax.

Gambling machine operators are required to pay gambling tax on a quarterly or half-yearly basis to the Region in which the gambling machine is operated. There is no taxable base, but an annual fixed amount that is paid for each gambling machine and which varies from Region to Region and depends on the type of machine (annual average at approximately €3,500). There are reduced tax amounts for multi-position machines (i.e. the fixed rate is not multiplied by the number of positions at the machine on a linear basis).

Casino operators are required to pay gambling taxes on a quarterly basis to the Region in which they are located. Taxes are based on a sliding scale and assessed on gross gaming revenue (“GGR”) for table games activity, and machines pay the corresponding fixed tax rate. For example, in the Andalusia Region, the sliding scale goes from 15% to 58% and Type C machines are taxed at an annual €5,300 (per position) fixed rate.

Sports betting operators pay a variable tax (for example, 10% in the Region of Madrid) on GGR.

Gambling arcade and bingo hall operators do not pay a specific gambling tax, which is levied on sales of bingo cards, the machines installed and sports betting activities, as applicable, which may be located in each of them.

In addition, gambling operators must pay certain one-off administrative taxes in relation to the grant of authorisations, installation of machines, renewals, homologation of machines, systems and gambling equipment, etc. Gambling activities are VAT-exempt, but gambling operators must bear VAT on any other services acquired from third parties and/or offered to customers. Corporate tax (statutory rate: 25%) and economic activities tax (depending on the municipality) further apply to their activities and locations.

Online gambling

Depending on the specific type of gambling activity, Law 13/2011 establishes 20% of stakes or GGR (Net Profit), defined as the total amount wagered plus any other income that would be directly derived from the organisation or operation of the game, less the prizes paid out to players. This tax is called Tax on Gambling Activities (*Impuesto de Actividades de Juego* –“IAJ”).

The Spanish Government just lowered the IAJ from 25% to 20%.

The IAJ must be filed and paid quarterly, within a month from the end of every quarter.

Gambling activities are exempt from VAT.

Players’ tax

Players must declare winnings from gambling in their Personal Income Tax return; however, they can also deduct losses (levelling the winnings at the maximum).

2.8 What are the broad social responsibility requirements?

Gambling operators must draw up a series of measures related to mitigating the possible damaging effects that gambling may cause to persons, and must incorporate the basic regulations for a responsible gambling policy. Therefore, with regard to consumer protection, it is necessary to: a) pay proper attention to risk groups; b) provide the public with the information needed to make a conscious choice about their gambling activities, promote moderate, non-compulsive and responsible attitudes to gambling; and c) inform of the prohibition to participate in games by minors and persons included in a registry (RIAJ), or in the Register of People Linked to Gambling Operators.

Online gambling operators (national) and gaming operators, generally, shall establish financial limits for the deposits each participant may receive daily, weekly or monthly in the different games.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

Gambling operators and activities are subject to the relevant laws governing AML and terrorism prevention regulations. Directive 849/2015 of the EU and Law 10/2010, modified by Royal Legislative Decree 11/2018, of 31 August, and Royal Decree 304/2014 include specific regulation on payment of prizes and client identification which apply to providers. This regulation is more specific and intense in relation to casinos and online gambling. These regulations require operators to apply customer due diligence measures for single transactions or rewards amounting to €2,000.

Regarding online gambling, cryptocurrencies such as Bitcoin can be implemented as a means of collection/payment and an electronic collection/payment utility with bitcoins, provided that the gambling account of the player is nominated in euros. Regarding land-based gambling, the analysis of playing with bitcoins is a bit different; the rules expressly refer to monetary units in euros (the price of games or bets, the number of prizes, etc.); hence, playing with bitcoins is not possible *a priori*.

3 Online/Mobile/Digital/Electronic Media

3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

Online gambling activities are defined as those games that are played with electronic, computerised, telematics and interactive means and those in which personal attendance is of an accessory nature. This scope encompasses the so-called “auxiliary terminals and machines” which are used for the organisation, operation or development of gambling activities. The latter plus the software used are understood to be part of the gambling platform and hence are subject to the same gaming regulations on approval and

certification. However, it is complicated to obtain the Regions' authorisations to install such terminals.

Licences for the offering of online gambling are intended only for Spanish or overseas-based operators – only EEA entities – and operators are required to target only Spanish or Spanish-resident consumers.

3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

State-wide online gambling is restricted to the regulated gambling verticals, previously licensed and to be offered according to the technical homologations granted, if breached sanctions are applicable, e.g. offering gambling to the Spanish territory without a Licence is a very serious infringement of the law and a fine of between €1,000,000 and €50,000,000 might be imposed. Regarding enforcement, the Administration has been rather active, with 181 sanctioning proceedings initiated for operating without a Licence during the period 2012 to 2017.

3.3 What terminal/machine-based gaming is permitted and where?

Sports betting machines are not prohibited specifically in any Region but have only been regulated explicitly in the Castilla y León Region. In the rest of the Regions they are adapted to other types of gambling machine regulation.

Depending on the Region, the type of gambling facility and on the type of machines, the machines may allow cash or cards (or both). However, AWP's in bars only allow cash as, to date, sports betting is not expressly contemplated for these facilities.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

In Spain, the general rule is that liability for gambling infringements corresponds to those who exploit these activities.

Only in very exceptional cases are third parties liable, such as athletes, coaches or other direct participants, referees performing or acting in the event or sport activity on which they place their bets, as well as the people who resolved appeals against the decisions of those referees.

Audio-visual or electronic communications service providers, mass media, advertising agencies and ad networks will be responsible for the promotion, sponsorship and advertising of gambling when organisers do not have the necessary authorisation to legally advertise those games.

4.2 What form does enforcement action take in your jurisdiction?

Please see question 2.5 above. Regulations distinguish between several types of infringements/sanctions: Very Serious; Serious; and Minor offences. The most serious may lead to revocation of the Licence.

4.3 Do other non-national laws impact upon liability and enforcement?

General EU rules and principles under the Treaty on the Functioning of the European Union apply to gambling activities, and EU case law has a great impact on the way national markets are and may be shaped, but not upon liability and enforcement.

The MS are free to pursue their own policy, set relevant restrictions on betting and gambling activities and define the required level of protection to safeguard the MS' regulations. Nevertheless, any restrictive measures (such as gambling monopolies or licensing systems) that any given MS may impose in its gambling legislation may constitute restrictions to the freedom to provide services in the internal market of the EU (article 56 of the TFEU) and must satisfy the conditions laid down in relevant case law of the Court of Justice of the European Union about their proportionality, suitability and coherence with regard to achieving the policy objectives of the MS.

4.4 Are gambling debts enforceable in your jurisdiction?

While legal gambling contracts are valid and amounts won can be claimed, in the case of illegal gambling (operated without the relevant authorisations), the amounts won cannot be claimed before any court.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

Online gambling

New general licence process: the DGOJ has currently promoted the third tender for the online gambling licences process (ending 17 December 2018).

In the context of this decision, there is expected to be a modification of all Ministerial Orders that regulate the different modalities of games, in order to clarify the different types of games that can be offered under different licences.

In addition, the DGOJ is working on new regulations aimed at improving and reinforcing the identification of players.

This situation may result in the period for the third tender being extended.

However, whether those regulations come into force depends on the political stability of the new Spanish government, since all those changes were proposed by the former government.

Land-based gambling

Spanish Regions are constantly amending their land-based regulations to adapt them to new technologies and gambling verticals. Currently, the following are in progress:

- The Autonomous Region of Valencia is amending the Gambling Law in an attempt to “modernise”, increase the protection of players and reduce limitations in planning for casinos and machines.
- Madrid, Murcia and Galicia are working on new laws on gambling.

- The Balearic Islands are regulating to facilitate changes, removals and transfers of machines and to impose minimum distances between gambling arcades.
- The Canary Islands are seeking to renew gambling legislation. Minimum distances between gambling arcades and limitations on the number of machines in exploitation are expected.

It is not clear that all these legislative procedures can be completed before the call for new regional and local elections in May 2019.

Gambling advertising

We do not know if the Regulation on Advertising, which has been “dormant” for over two years, will finally pass in 2018. The DGOJ published a new draft version under the general principles of protection of players and other vulnerable social groups, and has put it out to public consultation until 12 January 2018.



Patricia Lalanda Ordóñez

LOYRA Abogados
Pº de la Castellana 144, 13 A–B
Madrid
Spain

Tel: +34 699 682 833
Email: patricia.lalanda@loyra.com
URL: www.loyra.com

Ms. Patricia Lalanda Ordóñez was recently made Partner at LOYRA Abogados where she leads the intellectual property, new technologies and data protection department, where her practice revolves around the latest innovating products of the gaming industry. Patricia is a lecturer on subjects such as land-based and online gaming, blockchain, cryptocurrencies and eSports, in various educational centres such as the Autonomous University of Madrid, IE Business School and FIDE (Foundation for Investigation for Law and the Company), and participates in national and international conferences. She frequently publishes on regulatory developments and opinion in leading industry journals. In 2015, Patricia was awarded the title of “40Under40 Emerging Leader” by the American Gaming Association (*Global Gaming Business Magazine*, November 2015 Issue: Emerging Leaders). Patricia studied law at Carlos III University in Madrid and obtained her LL.M. degree in IP, IT and NNTT from the Autonomous University of Madrid. Although currently living in Spain, she lived and studied for six years in New York.



Fernando A. Martín Martín

LOYRA Abogados
Pº de la Castellana 144, 13 A–B
Madrid
Spain

Tel: +34 609 584 559
Email: fmartin@loyra.com
URL: www.loyra.com

Mr. Fernando A. Martín Martín is a Partner at LOYRA Abogados, since 2007, specialising in the public law, litigation & dispute resolution aspects of the gambling law practice. He holds a Degree in Law, a Master’s in Corporate Legal Advisory and Corporate Law from the University of Navarra, plus a specialisation in litigation procedures by the UNED, in addition to Ph.D. courses and ongoing specialisation in Corporate Compliance. He recently obtained the title of Compliance Officer and advises on Plans, Programmes and Procedures of compliance to clients. He has led key gambling court proceedings in Spain. Additionally, he is the co-author of the gaming sector compilation *Legislación sobre el Juego* (Gaming Legislation), published by Thomson Aranzadi, and *El Nuevo Régimen Jurídico de los Juegos de Azar* (Gaming Legislation), published by La Ley (Walter Klubner), among other collaborations with prestigious law journals.

LOYRA

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59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com