



# Esports Laws of the World

# Contents

ARGENTINA .....	04	LUXEMBOURG .....	132
AUSTRALIA.....	09	MACAU .....	138
AUSTRIA.....	17	MALTA .....	142
BELGIUM.....	22	MEXICO .....	148
BRAZIL.....	28	NETHERLANDS .....	153
CANADA .....	34	POLAND .....	158
CHILE.....	45	PORTUGAL.....	165
CHINA .....	50	PUERTO RICO .....	170
CROATIA.....	55	ROMANIA.....	174
CZECH REPUBLIC.....	59	RUSSIA.....	179
DENMARK .....	64	SINGAPORE.....	184
EGYPT.....	68	SLOVAKIA .....	191
FINLAND .....	73	SLOVENIA.....	196
FRANCE .....	78	SOUTH KOREA .....	201
GERMANY .....	85	SPAIN .....	206
GREECE .....	91	SWEDEN .....	211
HONG KONG.....	96	SWITZERLAND .....	217
HUNGARY .....	101	TAIWAN .....	222
INDIA .....	106	THAILAND.....	227
INDONESIA .....	111	TURKEY .....	232
IRELAND.....	118	UKRAINE .....	238
ITALY .....	122	UNITED KINGDOM .....	244
JAPAN .....	127	UNITED STATES.....	250

# Introduction

DLA Piper Esports Laws of the World is the result of fantastic teamwork of our colleagues worldwide, and demonstrates our commitment to provide our clients with innovative tools to support their business.

The esports market has been booming over the last few years, but unfortunately, or fortunately, in some cases, regulations have not been able to catch up. Gambling, sports, and prize promotion/advertising rules might apply to esports events, impose restrictions or grant exemptions, depending on how and where they are organized. There are indeed a number of variables.

Is the esports tournament online or land-based?  
Is a country recognizing esports as an official sport?  
Can any type of prize be awarded to participants?  
What are the technical requirements to be complied with? And what is the actual risk of local penalties?

At the same time, there are several different actors in the esports market. From event organizers to media companies, including online platforms, to sponsors and video game publishers which have different roles, responsibilities, and the need to preserve and maximize their profits and exploitation rights. Even stringent contracts and corporate structures might not be enforceable if in contrast with local laws, endangering the profitability of the entire investment.

And the same issues arise in contracting players. These might be players who could become extremely popular in quite a short period of time also through online streaming platforms and channels of communications that are rapidly changing. As such, the appropriate contracting of their services is paramount to avoid subsequent challenges.

This guide is not intended to give a comprehensive review of all the laws affecting esports worldwide, and it should not be considered a replacement for legal advice. Regulation in this area is continuously changing, and we will regularly update the guide and ensure that it is responsive to clients' requests and feedback.

We hope this guide will help you to flag potential issues and solutions. To discuss any of these issues in more detail, please reach out to the contact person/s in the relevant jurisdiction indicated in the guide.



**Giulio Coraggio**

**Partner**

**DLA Piper Studio**

**Legale Tributario Associato**

T +39 02 80 618 619

[giulio.coraggio@dlapiper.com](mailto:giulio.coraggio@dlapiper.com)

Argentina



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

There is no comprehensive regulation of esports in Argentina. At the federal level, the Criminal Code article 301 bis – provides penalties for those who exploit or organize games of chance without the appropriate legal authorization. However, under Argentina's constitutional system, the regulation of esports falls within the jurisdiction of the different provinces, several of which have issued laws on the matter. For example, the province of Buenos Aires has enacted Law 15,079 which regulates gambling on online games, including those based on the ability of the players as well as those based on pure chance.

## With regard to the applicability of prize promotion regulations to esports activities

Decree 274 of 2019 prohibits the offer of participation in games of chance, where such participation is subject to a condition that certain goods or services must be purchased by the participant. This prohibition extends to online games.

## With regard to the advertisement of esports related activities

The relevant provincial laws and regulations include restrictions on advertisements related to unauthorized esports. These restrictions are generally applicable if the advertisement is directed at customers located in the relevant province.

In addition, the federal rules on advertisements – particularly Decree 274 of 2019 – may apply to the advertising of esports related activities, especially if such advertisement is misleading, false or otherwise implies unfair competition.

## With regard to the protection of intellectual property rights as part of esports activities

Argentine intellectual property rights are fully applicable to esports. The reach of such rights depends on the type of right involved. The Patent Law expressly regulates the types of conduct where the effects in Argentina constitute a violation of Argentine patents.

In the case of copyright, the principle of protection, based on the Berne Convention, is generally applicable, and protection will thus extend to conduct taking place within Argentina or specifically directed to the Argentine market. The Trademark Law does not include express rules on the matter, but generally it will be applicable when trademark use takes place in Argentina or when marketing is specifically directed to the Argentine market.

## With regard to the processing of personal data as part of esports activities

The Personal Data Protection Law – Law 25,326 – and its regulations are fully applicable to esports activities. In particular, these rules would be applicable to personal data obtained in connection with persons located within the Argentine territory.



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Argentine laws may be enforceable against entities operating abroad. However, the possibility of extraterritorial enforceability differs depending on the type of law involved. Punitive laws, such as Article 301 bis of the Criminal Code, on illegal gambling, apply to conduct taking place in Argentine or having effects in Argentina such that these effects are the constituent elements of a criminal violation. Similar rules on extraterritoriality are applicable to regulatory statutes. Intellectual property laws are applied extraterritorially on the basis of the principle of protection, pursuant to which the different intellectual property statutes or the case law developed under such statutes determine the international reach of the intellectual property right governed by the relevant statute.

Argentine courts will generally not directly apply their jurisdictional power extraterritorially; rather, they will act through the relevant foreign courts, as provided by applicable treaties or by the general rules on international judicial cooperation.



### Recognition of esports as a sport

Is there any regulation according to which esports can fall under the legal category of sports?

There is no regulation categorizing esports within the concept of sports. Whether they constitute sports must be determined in the context of the relevant laws or regulation whose application is being determined in a specific case.



### Consumer Protection – advertising

Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

The advertising of videogames during esports tournaments is subject to the general rules on advertisement; there is no specific regulation.



### Technical requirements of esports tournaments

Do videogames need any certification to be used as part of esports tournaments?

There is no general certification requirement for videogames. However, under certain provincial statutes, videogames which imply the possibility of bets or gambling are subject to license requirements.



### Participation in esports tournaments

Can players pay an admission fee to participate in esports tournaments?

The payment of a price to participate in an esports tournament is generally legal. However, if the tournament offers prizes or other payments to participants, the organization of such tournaments may be subject to the provincial regulations applicable to esports, which may require special licenses for the organization or offer of the tournament.



### Sponsorship of esports tournaments

Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

Sponsorship of esports tournaments is legal provided it complies with the general rules on advertising. However, if the esports tournament involved is illegal, the sponsor may be subject to the penalties applicable to the organizers of the tournament, if the sponsor has made the tournament possible or has otherwise facilitated or encouraged the illegal activities involved in such tournament.



### Participation of minors in esports tournaments

Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

The participation of minors in esports is subject to parental authorization or to the authorization exercising similar authority over the minor.



### Selection of participants

Is it possible to place any restriction on the players that can participate in an esports tournament?

Selection of participants is possible if it is based on non discriminatory criteria. Some provincial regulations restrict the access of minors to esports.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

T&Cs of esports tournament have to comply with several sets of legal requirements, namely:

- Requirements imposed by provincial regulations applicable to esports;
- General requirements imposed by the Civil and Commercial Code;
- Requirements applicable under consumer protection rules; and
- Requirements on false or misleading advertisements.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

The selection of winners and the award of prizes must comply with the rules of the tournament informed by the organizers. Violation of these rules may constitute a contractual breach, a violation of the provincial regulations on esports and, under certain circumstances, criminal fraud.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

These sanctions may be imposed if they were foreseen in the contractual or other rules governing the tournament.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

If the prize is significant, whether in cash or otherwise, the tournament may be classified as a form of gambling and governed by the provincial and other rules applicable to gambling.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

Several provinces have enacted special regulation applicable to esports. These regulations generally require special licenses for the marketing of esports reaching participants in such provinces. The provinces also have special regulations for certain offline sports, which are generally inapplicable to esports.



## Other local requirements

### Are there any other key local requirements?

The organization or exploitation of esports requires, under the laws of several provinces, special licenses granted by local authorities. This may require participation in a bidding process.

In addition, payments made for the participation in esports are subject to special tax rules, and may be subject to withholdings.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

In the jurisdictions in which esports are especially regulated, and in which licenses are required, the license must normally be obtained before any activity governed by the relevant regulations takes place.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

The rules on consumer protection and advertising may require that the terms of tournaments whose participants qualify as consumers should be in Spanish. A similar requirement may be applicable under the provincial regulations on on-line gambling.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

The penalty for illegal gambling, under Article 301 bis of the Criminal Code is imprisonment for a term ranging between 3 months and 6 years. In addition, non-compliance with the provincial regulations on esports may result in fines which vary depending on the province involved.

## Key contact



**Guillermo Cabanellas**

**Partner**

DLA Piper Argentina

T +5411 4114 5500

[g.cabanellas@dlapiper.com.ar](mailto:g.cabanellas@dlapiper.com.ar)

# Australia



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws:

In Australia, gambling is governed by Federal, State and Territory legislation. As a general rule, skill games (with no element of chance) are not classified as a gambling activity and as such are not regulated under the relevant gambling laws. The only jurisdiction in which esports have been specifically designated under the gambling legislation is the Northern Territory.

For completeness, below is the legislation relevant to gambling generally in each Australian jurisdiction, but noting that most of these don't appear to apply to esports at present:

### Commonwealth

- *Interactive Gambling Act 2001 (Cth)*
- *Broadcasting Services Act 1992 (Cth)*
- *Broadcasting Services (Online Content Service Provider Rules) 2018 (Cth)*

### Victoria

- *Gambling Regulation Act 2003 (Vic)*
- *Crimes Act 1958 (Vic) s 195C*

### New South Wales

- *Unlawful Gambling Act 1998 (NSW) s 5(1)(a)*
- *Betting and Racing Act 1998 (NSW)*

### Queensland

- *Wagering Act 1998 (Qld)*
- *Interactive Gambling (Player Protection) Act 1998 (Qld)*
- *Criminal Code (QLD) s 230A*

### ACT

- *Interactive Gambling Act 1998 (ACT)*
- *Unlawful Gambling Act 2009 (ACT)*
- *Racing and Sports Bookmaking Act 2001 (ACT)*
- *Unlawful Gambling Act 2009 (ACT) s 7(1)(a)*

### South Australia

- *Authorised Betting Operations Act 2000 (SA)*
- *Lottery and Gaming Act 1936 (SA) s 59*

### Tasmania

- *Gaming Control Act 1993 (Tas)*

### Western Australia

- *Betting Control Act 1954 (WA)*
- *Bookmakers Betting Levy Act 1954 (WA)*
- *Gaming and Wagering Commission Act 1987 (WA) s 42(1), 42(2), 42(3)(b)*

### Northern Territory

- *Unlawful Betting Act 1989 (NT)*
- In the Northern Territory, esports official tournaments or competitions are a 'declared sport' for the purposes of bookmaking licences. This is the only jurisdiction in Australia to make such a declaration so far.
- *Gaming Control Act 1993 (NT) s 54(1)*

## With regard to the applicability of prize promotion regulations to esports activities:

In Australia, prize promotions are governed by Commonwealth, State and Territory legislation.

Games of skill do not require licenses and are generally unregulated across all Australian jurisdictions.

The laws and regulations that apply to a prize promotion for a game of chance will depend on where the prize promotion is advertised and made available to entrants. If a prize promotion is to be advertised nationally, the promoter will need to comply with the laws and regulations in each State and Territory.

### Commonwealth

- *Australian Consumer Law, set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth)*
- *Privacy Act 1988 (Cth)*
- *Spam Act 2003 (Cth)*
- *Do Not Call Register Act 2006 (Cth)*

**ACT**

- *Lotteries Act 1964 (ACT)*
- *Gambling and Racing Control (Code of Practice) Regulation 2002 (ACT)*

**New South Wales**

- *Lotteries and Art Unions Act 1901 no 34 (NSW)*
- *Licensing and Registration (Uniform Procedures) Act 2002 (NSW)*
- *Lotteries and Art Unions Regulation 2007 (NSW)*

**Northern Territory**

- *Gaming Control Act 2000 (NT)*
- *Gaming Control (Community Gaming) Regulations 2011 (NT)*
- *Northern Territory Code of Practice for Responsible Gambling*

**Queensland**

- *Charitable and Non-Profit Gaming Act 1999 (Qld)*

**South Australia**

- *Lottery and Gaming Act 1936 (SA)*
- *Lottery and Gaming Regulations 2008 (SA)*

**Tasmania**

- *Gaming Control Act 1993 (Tas)*
- *Gaming Control Regulations 2004 (Tas)*

**Victoria**

- *Gambling Regulation Act 2003 (Vic)*
- *Gambling Regulation Regulations 2005 (Vic)*
- *Gambling Regulation Amendment Regulations 2012 (Vic)*

**Western Australia**

- *Gaming and Wagering Commission Act 1987 (WA)*
- *Gaming and Wagering Commission Regulations 1988 (WA)*

**With regard to the advertisement of esports related activities:**

In Australia, advertising is governed by Commonwealth, State and Territory legislation.

**Commonwealth**

- *Australian Consumer Law in the Competition and Consumer Act 2010 (Cth)*

- *Spam Act 2003 (Cth)*
- *Interactive Gambling Act 2001 (Cth)*
- *Telecommunications Act 1997 (Cth)*
- *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)*
- *Broadcasting Services Act 1992 (Cth)*
- *Radiocommunications Act 1992 (Cth)*
- *Broadcasting Services (Online Content Service Provider Rules) 2018 (Cth)*
- *Australian Association of National Advertisers (AANA) Code of Ethics*
- *AANA Wagering Advertising & Marketing Communication Code*
- *AANA Code For Advertising & Marketing Communications To Children*

**Classification (Publications, Films and Computer Games) Act 1995 (Cth) and related Enforcements Acts in each Australian State and Territory, as follows:**

- *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 (ACT)*
- *Classification of Publications, Films and Computer Games Act 1995 (NT)*
- *Classification (Publications, Films and Computer Games) Enforcement Act 1995 (NSW)*
- *Classification of Computer Games and Images Act 1995 (Qld)*
- *Classification (Publications, Films and Computer Games) Enforcement Act 1995 (Tas)*
- *Classification (Publications, Films and Computer Games) Act 1995 (SA)*
- *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 (Vic)*
- *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)*

**In addition to the above, each Australian State and Territory has legislation/regulations in place relating to the advertising of gambling, for example:**

- *Gambling and Racing Control (Code of Practice) Regulation 2002 (ACT)*
- *Gaming Control Act 1993 (NT)*
- *Betting and Racing Act 1998 (NSW)*

- *Gaming Machine Act 1991* (Qld)
- *Gaming Control Act 1993* (Tas)
- *Independent Gambling Authority Act 1995* (SA)
- *Gambling Regulation Act 2003* (Vic)
- *Gaming and Wagering Commission Act 1987* (WA)

### With regard to the protection of intellectual property rights as part of esports activities:

There is no legislation that applies only to the intellectual property rights in or related to esports. The relevant Australian statutes in respect of intellectual property (including those used in or in relation to esports) are:

- *Copyright Act 1968* (Cth) – setting out Australian law on copyright and related rights.
- *Patents Act 1990* (Cth) – setting out Australian law on patents and related rights.
- *Trade Mark 1995* (Cth) – setting out Australian law on trade mark and related rights.

Of these, the Copyright Act is likely to be the most relevant, as different elements of the game may be protected by copyright (e.g. player names, team names and logos, character images, soundtrack, etc.) and the broadcast of the tournament will be protected by copyright also.

### With regard to the processing of personal data as part of esports activities:

Australia regulates data privacy and protection through a mix of federal, state and territory laws. The Federal Privacy Act 1988 (Cth) ("**Privacy Act**") and its Australian Privacy Principles (APPs) apply to private sector entities with an annual turnover of at least AUD 3,000,000, and all Commonwealth Government and Australian Capital Territory Government agencies.

Under the Privacy Act, the Privacy Commissioner has authority to conduct investigations, including own motion investigations, to enforce the Privacy Act and seek civil penalties for serious and egregious breaches or for repeated breaches of the APPs where an entity has failed to implement remedial efforts.

Most States and Territories in Australia (except Western Australia and South Australia) have their own data protection legislation applicable to State government agencies, and private businesses that interact with State government agencies.



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

The laws and codes relating to prize promotion apply where a prize promotion is advertised to, or entry is otherwise available to, persons located in the relevant State or Territory, regardless of where the promoter is based.

In terms of gambling laws, the *Interactive Gambling Act 2001* (Cth) specifically extends its application to companies located overseas which provide or advertise interacting gambling services to Australian customers.

Australia's intellectual property laws are enforceable against overseas entities where the infringing conduct takes place in Australia and in some cases where the conduct takes place outside Australia but is targeted at Australia (e.g. websites where costs are displayed in AUD or where the foreign conduct is advertised to Australia specifically).



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

There is no dedicated legal or regulatory regime applicable to esports in any jurisdiction in Australia.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification for the usage of video games in esports tournaments, apart from the certifications necessary for their sale and exhibition to the public, such as those provided by the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (the "**Commonwealth Classification Act**").

The Australian classification system is a cooperative scheme between all Australian States and Territories, with each State and Territory having a Classification Enforcement Act to ensure compliance with the Commonwealth Classification Act. The Enforcement

Acts set out how computer games can be sold, hired, exhibited and advertised in each State and Territory. The Classification Board makes classification decisions about computer games under the Classification Act, and under the *Broadcasting Services Act* for internet content.

An esports tournament may need to be registered under the Commonwealth Classification Act if it wholly or mainly involves or relates to the “demonstration of computer games”. The tournament must comply with restrictions under both the Commonwealth Classification Act and the *Classification (Publications, Films and Computer Games) (Conditional Cultural Exemption Rules) Instrument*, though it is possible to apply for a variation of the relevant requirements.

Furthermore, if esports tournaments are subject to gambling or prize promotion regulations, a certification may be necessary depending on the activities to be undertaken and the regulatory regime of the relevant State or Territory.



### Sponsorship of esports tournaments

**Are particular requirements applicable to sponsorship agreements relating to esports tournaments?**

There are no specific rules applicable to sponsorship agreements for esports tournaments.

Tobacco sponsorship and advertising in Australian sport is prohibited under the *Tobacco Advertising Prohibition Act 1992* (Cth).

A number of other industries, including alcohol, food and beverage, and gambling have voluntary industry codes of practice that apply to limit advertising, which includes sponsorship of sporting events.



### Consumer Protection – advertising

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

Yes. Videogames must be advertised in accordance with the Commonwealth Classification Act and Classification (Publications, Films and Computer Games) (Markings

and Consumer Advice) Determination 2014. Broadly speaking, these regulations contain rules for when and how the classification markings must be displayed. In addition, general obligations not to mislead or deceive consumers under the Australian Consumer Law (**ACL**) also apply – this means any representations made about game features, reviews or cost (amongst other matters) must be true, accurate and able to be substantiated.



### Participation in esports tournaments

**Can players pay any price to participate in esports tournaments?**

There is no legislation currently regulating this issue.



### Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

esports tournaments that involve games with age ratings (e.g. shooting or combat games) should restrict players from competing or spectating if they are under the minimum age set by the Australian Classification Board.

Organizers of esports tournaments should keep in mind age restrictions relevant to the classification of the games to be played under the Commonwealth Classification Act.



### Selection of participants

**Is it possible to place any restriction to the players that can participate in an esports tournament?**

Yes, provided such restrictions are reasonable and non-discriminatory. The relevant terms and conditions of entry must also clearly set out any eligibility requirements for participation in the esports tournaments.



## Contracting esports players

### Are there particular requirements for T&Cs of esports tournaments?

The terms and conditions of esports tournaments are bound by Australia's national consumer law, known as the Australian Consumer Law included in Schedule 2 of the Competition and Consumer Act 2010 (Cth). Under s 18 of the ACL, an entity can be held liable for misleading and deceptive conduct if the terms and conditions are not clearly explained and displayed to a customer. To avoid this, the conditions of the tournament must be prepared prior to its commencement and be clearly displayed for all participants to see during the course of the event. The tournament must be conducted in accordance with those conditions.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

No. However, the relevant terms and conditions of entry must clearly set out how winners are determined and prizes will be awarded, to ensure that entrants are not misled. Further, depending on the nature of the prizes awarded, certain laws and regulations may apply (see below).



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can only enforce contractual provisions set out by the T&Cs of the relevant tournament.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

No, subject to the following comments.

Assuming that esports tournaments do not involve any element of chance in the determination of winners, they would not be regulated by, or subject to, prize restrictions under Australian trade promotion laws.

Practically, organizers of esports tournaments should explicitly state that their tournament is a "game of skill" in advertising/marketing collateral and the relevant terms and conditions of entry, to ensure that these requirements are not enlivened.

The following general considerations also apply:

- prizes should be awarded as they are advertised and described in the tournament's terms and conditions of entry, to ensure that entrants are not misled, such as for travel prizes where all relevant details should be disclosed (destination, class of travel, name of accommodation, duration etc.);
- where goods or services are awarded as a prize e.g. gaming accessories, they will be subject to standard consumer guarantees that apply under the Australian Consumer Law; and
- where an age or other restriction applies under State or Commonwealth law that would prevent an individual from procuring a prize, organizers should ensure that prizes comply with these restrictions e.g. tobacco products, firearms/ammunition, explosives, weapons, regulated health services such as cosmetics and liquor, among others.

There are some types of prizes that are prohibited in particular States and Territories, which should be checked depending upon the location of any tournament.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

Online esports tournaments may be subject to the *Interactive Gambling Act 2001* (Cth), as for example, certain esports may involve online in-play betting services.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

There are no specific timings to comply with. However, where applicable, organizers will need to ensure that the appropriate permits or approvals have been obtained prior to the esports tournament.



## Other local requirements

**Are there any other key local requirements?**

The applicability of gambling laws is the main consideration for esports tournament organizers. This will vary from event to event, as each game requires a varying degree of skill, and each State or Territory has different laws surrounding the types of games that are classified as gambling and are therefore unlawful without a permit.

If a game involves any element of chance (e.g. the ability to pick up "loot boxes") it would be advisable to seek local advice regarding the possible applicability of Australian trade promotion laws before proceeding with an esports tournament.

Esports are a growing market for traditional betting agencies, where customers can bet on the outcome of specific esports matches or tournaments. In this regard, esports competitors are treated in the same ways as competitors in traditional sports, with match-fixing considered a criminal offence in Australia.

There are no specific laws relating to live esports tournaments. However, any event which involves a large number of people in a venue may require local permits for use of the space, advertising in public spaces or the broadcast/playing of music or other media at the venue, among others.

Finally, as Australia's laws in relation to esports are yet to mature (for example the Australian esports Association has a draft Code of Conduct that has yet to be finalized) it is likely that there will be key changes to the local requirements for esports in the next few years, so local advice on the current requirements will be essential prior to conducting a tournament.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

All terms must be available in English.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

Penalties for breaching gambling laws or "unlawful" games regulations range from a fine (50 – 200 penalty units) to imprisonment (6 – 24 months), depending on the specific breach of law and Australian State or Territory.

Failure to obtain relevant permits may result in fines as determined by the relevant local authorities.

Under the ACL, penalties for misleading and deceptive conduct can amount to the greater of: AUD10 million, three times the value of the benefit received by the company (including any affiliates) from the offence that led to the penalty; or if the benefit cannot be determined by the court, then 10% of the annual turnover of the company in the past 12 months (calculated as the 12 month period ending at the month in which the company committed or began committing the offence). The maximum penalty for an individual is AUD 500,000.

For breaches of intellectual property laws the penalties can include: (i) an injunction to prevent further breaches, (ii) damages (the financial loss to the rights holder) or an account of profits (the net profit made by the infringer, and (ii) additional (punitive) damages if the conduct is flagrant.

Under the *Spam Act 2003* (Cth), the maximum fine for a company with no prior record is AUD 110,000 for a single offence, or AUD 220,000 where two or more contraventions occur on one day. If the company contravenes the same provision again, it may be liable to pay up to AUD 1,100,000 a day.

Under the Commonwealth gambling legislation, criminal penalties of up to AUD 1,110,000 for an individual or AUD 5,550,000 for a corporation apply as well as civil penalties of up to AUD 1,665,000 for an individual or AUD 8,325,000 for a corporation.

A breach of the various State *Gambling Acts* can also attract criminal sanctions.

## Key contacts

### Gambling Laws



#### **Jonathon Ellis**

**Partner**

DLA Piper

T +61 2 9286 8197

M +61 466 415 752

jonathon.ellis@dlapiper.com

### Intellectual Property



#### **Robynne Sanders**

**Partner**

DLA Piper

T +61392745539

M +61439433686

robynne.sanders@dlapiper.com

### Data and Privacy



#### **Nicholas Boyle**

**Partner**

DLA Piper

T +61 2 9286 8479

M +61 481 438 160

nicholas.boyle@dlapiper.com

Austria



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Austrian Gambling Act (*Glücksspielgesetz* – Federal Gazette No. 620/1989, as amended by the Federal Gazette 99/2020) providing the monopoly of the federal state legislator for the organization and exercise of games of luck.

Austrian Criminal Code (*Strafgesetzbuch* – Federal Gazette No. 60/1974, as amended by the Federal Gazette 111/2019), in particular Section 168 (1) providing criminal sanctions for the illegal offering of gambling activities.

## With regard to the applicability of prize promotion regulations to esports activities

Austrian E-Commerce Act (*E-Commerce-Gesetz* – Federal Gazette No. 152/2001, as amended by the Federal Gazette No. 34/2015) (relevant where prize promotions are offered online).

Austrian Gambling Act (*Glücksspielgesetz* – Federal Gazette No. 620/1989, as amended by the Federal Gazette 99/2020) providing the monopoly of the federal state legislator for the organization and exercise of games of luck.

Austrian Criminal Code (*Strafgesetzbuch* – Federal Gazette No. 60/1974, as amended by the Federal Gazette 70/2018), in particular Section 168 (1) providing criminal sanctions for the illegal offering of gambling activities.

## With regard to the advertisement of esports related activities

Austrian Consumer Protection Act (*Konsumentenschutzgesetz* – Federal Gazette No. 140/1979, as amended by the Federal Gazette No. 58/2018)

Austrian Unfair Competition Act (*Gesetz zum unlauteren Wettbewerb* – Federal Gazette No. 448/1984, as amended by the Federal Gazette No. 104/2019)

Austrian Audiovisual Media Services Act (*Audiovisuelle Mediendienste-Gesetz* – Federal Gazette 84/2001, as amended by the Federal Gazette 86/2015)

## With regard to the protection of intellectual property rights as part of esports activities

Austrian Copy Right Act (*Urheberrechtsgesetz* – Federal Gazette No. 111/1936, as amended by Federal Gazette No. 105/2015), setting out Austrian law on copyright and connected rights as well as user licences.

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

Austrian Data Protection Act (*Datenschutzgesetz* – Federal Gazette No. 165/1999, as amended by the Federal Gazette No. 14/2019).



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Entities operating abroad shall comply with Austrian law in case of esports events either situated and organized in Austria or addressed to Austrian players and/or consumers, even if they are also open to players/and or consumers of other jurisdictions.

There is no case law on this matter. However, Austrian law governing the set-up of an esports event is applicable in case such event is carried out in Austria or at least targets the Austrian market. Furthermore, the courts will apply and enforce domestic provisions in relation to prize promotions which are published on foreign media, but directed at the domestic public, especially if published on the internet.

The applicability of Austrian law can lead to significant obligations under administrative law, tax law or consumer and youth protection regulations.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

Although eSports are not officially recognized as a sport in Austria and there is no dedicated legal or regulatory regime applicable to esports, there are more and more opinions in Austrian literature arguing that esports should in fact be considered as falling under the legal category of sport.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

Esport tournaments are not specifically regulated by Austrian law. Therefore, there is no dedicated certification for the usage of video games in esports tournaments on a federal law level.

However, if an esport event is to be organized and carried out in Austria, the state-specific laws must be observed. For example, there are notification and authorization requirements for the implementation of larger events according to the Vienna Event Act (*Wiener Veranstaltungsgesetz*).

Furthermore, on a state law level the Pan-European Game Information Certification requirements ("PEGI") for video games for the state of Vienna and Corinthia and the entertainment software self-control certification ("ESC") requirements for video games in the state of Salzburg are applicable.

When organizing an esport event, the certification regulations of the respective state in which the esport event is carried out should therefore be assessed and taken into account.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments. In general, statements or symbols of any kind

related to direct or indirect sponsorship are subject to the principles of truth and fairness under competition law.

Otherwise the sponsorship agreements will be governed by general Austrian civil law. Also, the type of consideration due by the sponsor and the services provided by and to the sponsor can lead to tax issues.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

According to the Austrian law on unfair competition, misleading business practices in connection with the advertising of products are generally forbidden.

Advertising in online videos or TV offerings (such as web TV, streaming services or video-on-demand offerings) must – according to the Austrian Audiovisual Media Services Act (*Audiovisuelle Mediendienste-Gesetz – AMD-G*) – comply with the following criteria, to protect minors from physical and mental damage:

- advertising shall not directly encourage minors to buy or rent goods or services by exploiting their inexperience and gullibility;
- advertising shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- advertising shall not exploit the special trust minors place in parents, teachers or other persons of trust;
- advertising must not show minors in dangerous situations without good reason.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

There are no requirements or regulations specifically addressing participation fees for esport tournaments.

However, in case the participants are obliged to pay an entry fee, the prize promotion shall be based on skills and not chance. Any obligation to pay an entry fee to participate and where prize promotions

rely on chance to a certain degree might trigger the licensing requirements under the Austrian Gambling Act.

Therefore, agreements with players and tournament provisions need to be structured to avoid the risk of licensing under the Austrian Gambling Act.

### Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

Minors (persons between 14 and 18 years of age) require the consent of their legal representative in order to conclude binding contracts (including contractual obligations). After turning 18, individuals obtain full capacity to conclude any kind of contracts under Austrian law.

### Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

There are no requirements or applicable regulations regarding the participation restrictions. In general, the criterion of selecting participants needs to be fair, objective, transparent and non-discriminatory.

Depending on the game and the Austrian state in which the esports event is taking place, the state regulations on youth protection (*Jugendschutzgesetz*) might apply. Such regulations typically refer to obligations of the host organizing the event and may contain specific age limitations (also in connection with PEGI and ESC classifications). This may apply to the participating eAthletes as well as the spectators of the event.

### Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

There are no particular requirements for T&Cs of esports tournaments under Austrian law. The Austrian Consumer Protection Act only provides general rules for Terms and Conditions and its applicability will depend on the fact, whether the eAthletes qualify as entrepreneurs or consumers in this context.

### Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

The conditions for both skills competitions and prize draws, including the award of prizes, must be transparent to the participants.

The applicable laws on prize promotions do not include a provision regarding the selection of judges or judging for skill competitions. Nevertheless, the conditions for skill competitions and prize draws have to be transparent and easily accessible for participants.

### Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers may only enforce contractual provisions set out by the T&Cs of the tournament.

### Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

There are no specific restrictions on the type of prizes to be awarded in an esports tournament. The prize may be awarded as cash or non-cash benefit.

If eAthletes are paying in cash to participate in an esports tournament which contains elements of chance and obtain a winning in cash or non-cash with economic value, there is a risk that the tournament might trigger licensing requirements under the Austrian Gambling Act.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

Each state in Austria provides specific event law regulations. In order to carry out an on-site esports event in Austria, the tournament's host must comply with local state provisions by obtaining approval of or notifying the competent authority prior to carrying out the event.

This may not apply for online esports tournaments, provided that there is no relevant nexus to Austria. Apart from that, there are no specific provisions regulating online esports tournaments in Austria.

For online esports tournaments it is advisable to contact the competent authority beforehand in order to clarify whether approval requirements for the event are applicable.



## Other local requirements

### Are there any other key local requirements?

In Austria, esports is currently not officially recognized as a sport and therefore exemptions are not applicable. Additionally, there is no dedicated law regime applicable to esports.

As a consequence, a deeper review of the mechanic of esports tournaments is necessary to avoid challenges.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

It might be necessary to obtain a license under the respective state law in which the esports tournament shall be carried out. In such case the license must be obtained before actually carrying out the event.



## Translations

### Are the terms of the esports tournament required to be translated by law?

In case of business-to-consumer T&Cs or other information to be provided to consumers the T&Cs or the other provided information must be in German language. Furthermore, such provisions or materials must be transparent and must be easily accessible to the consumers.

In case of business-to-business T&Cs or other information provided to the business partner the use of German is recommended but not mandatory.



## Penalties for non-compliance

### What are the penalties for non-compliance?

According to Section 168 (1) of the Austrian Criminal Code, the organization of a game in which profits and losses exclusively or predominantly depend on chance or which is expressly prohibited may result in monetary fines of up to 360 times of the conducting person's average daily income or imprisonment of up to six months.

Section 52 of the Austrian Gambling Act provides for administrative penalties in case of violation of the rules set forth therein. The monetary sanctions range from EUR22,000 to EUR60,000 for each offense.

Any violation of the Austrian provisions on unfair competition may be subject to damages or interim injunction or an injunction law suit.

## Key contact



### Dr. Jasna Zwitter-Tehovnik

#### Partner

Finance, Projects and Restructuring  
DLA Piper Weiss-Tessbach  
Rechtsanwälte GmbH  
T +43 1 531 78 1042

jasna.zwitter-tehovnik@dlapiper.com

# Belgium



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

- Gaming Act of 7 May 1999 on games of chance, bets, gaming establishments and the protection of players
- Royal Decree of 4 May 2018 on games of chance about virtual sporting events in the fixed gaming establishments class IV
- Royal Decree of 25 October 2018 on conditions for the operation of games of chance and betting by means of information society tools
- Belgian Code of Economic Law ("BCEL"), Book VI, concerning Consumer Protection and Market Practices
- Articles 301, 302, 303 and 304 of the Belgian Penal Code, which sanction illegal gambling activities

## With regard to the applicability of prize promotion regulations to esports activities

- Belgian Code of Economic Law, Book VI, concerning Consumer Protection and Market Practices
- Lotteries Act of 31 December 1851

## With regard to the advertisement of esports related activities

- Belgian Code of Economic Law, Book VI, concerning Consumer Protection and Market Practices
- Royal Decree of 25 October 2018, on the procedures for operating games of chance and bets using information society instruments

## With regard to the protection of intellectual property rights as part of esports activities

- Belgian Code of Economic Law, Book XI, concerning Intellectual Property

## With regard to the processing of personal data as part of esports activities

- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data
- Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Yes, insofar those foreign entities exploit games of chance on the Belgian territory. The enforcement risk against foreign operators is rather high. Indeed, games of chance are heavily regulated and enforced by the Belgian Gaming Commission, including through actions against operators established abroad.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Sports are a community competence, so differences can exist between the Flemish, the French and the German community. However, at present, neither community has recognized esports as a sport. For example, in an answer to a parliamentary question of 9 October 2019, the Flemish minister of sports, Mr Ben Weyts, stated (i) that esports are not considered sports and (ii) that due to their sedentary nature, esports are diametrically opposed to the Flemish sports policy which promotes physical activity and an active lifestyle (with the exception of exergaming, which do promote physical activity). Mr Weyts further stated that a debate should take place with a view to a clear Flemish regulatory framework of the esports sector, but not as part of the sports sector.

However, from a federal tax point of view, the competent minister Vincent Van Peteghem confirmed in the parliamentary Finance Committee of 3 February 2021 that esports players should be considered as sportspersons and enjoy the same benefits. Indeed, the minister confirmed (i) that foreign esports players who are active in Belgium can also benefit from the professional withholding tax regime of 18% applicable to foreign sportspersons and entertainers when they are active in our country for less than 30 days, in accordance with article 17 of the OECD Model Convention with respect to taxes on income and on capital, as well as (ii) that Belgian esports players who

are employed by a Belgian club can also benefit from an exemption, applicable under certain conditions, from the payment of 80% of the professional withholding tax deducted from the salaries of employed sportspersons in accordance with the law of 4 May 2007 on the tax status of salaried sportspersons.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There is no certification requirement for videogames under Belgian law. The certification of videogames is entirely voluntary and based on self-regulation.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments. The general rules on online advertisements for games of chance introduced by the Royal Decree of 25 October 2018 apply.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Belgian law currently does not specifically regulate either (i) advertising of videogames or (ii) esports tournaments. *A fortiori*, there is also no specific regulation under Belgian law concerning the advertising of videogames *during* esports tournaments.

That being said, Article 4 § 2 of the Gaming Act of 7 May 1999 does prohibit “to advertise a game of chance or a gaming establishment, or recruit players for a game of chance or gaming establishment when the person

*involved knows that it concerns the operation of a game of chance or a gaming establishment which is not licensed in accordance with this Act*”. To the extent a videogame would be considered a game of chance and would not be licensed in accordance with the Gaming Act of 7 May 1999, advertising of such videogame would thus be prohibited, including during esports tournaments. In case such videogame would be considered a game of chance or betting operated via information-society instruments, licensed under class A+ [i.e. for online casinos], B+ [i.e. for online slot machine arcades] or F1+ [i.e. for online betting], the Royal Decree of 25 October 2018 on the procedures for operating games of chance and bets using information-society instruments also imposes a number of restrictions concerning the advertising in relation thereto.

To conclude, more generally, all fair market practices rules should be complied with, including the rules on comparative and misleading advertising.



## Participation in esports tournaments

### Can players pay any price to participate in esports tournaments?

Article 2 of the Gaming Act of 7 May 1999 defines a game of chance as “any game by which a stake of any kind is committed, the consequence of which is either loss of the stake by at least one of the players or a gain of any kind in favor of at least one of the players or organizers of the game and in which chance is a factor, albeit ancillary, for the conduct of the game, determination of the winner or fixing of the gain”. This means that under Belgian law, the constitutive elements of a game of chance are: a game, a stake which can be lost or won and chance.

The price that players need to pay to participate in an esports tournament may be qualified as a stake. If the other elements are also present, the esports tournament shall qualify as a game of chance. Pursuant to Article 4 § 1 of the Gaming Act of 7 May 1999, it is prohibited to exploit a game of chance or an establishment for games of chance without having first obtained a license from the Belgian Gaming Commission, regardless of the form, the place or the (direct or indirect) manner in which they are offered.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

There is no specific regulation concerning the participation to esports tournaments. However, depending on the circumstances, as indicated *supra*, esports tournaments may be considered games of chance (i.e. if the price that players need to pay to participate in an esports tournament would be considered a stake and if the other constitutive elements are also present).

In this regard, article 54 of the Gaming Act of 7 May 1999 provides that “§1. Access to the gaming rooms of class I and II gaming establishments [i.e. casinos and slot machine arcades] is prohibited for persons under 21 years of age with the exception of adult personnel of gaming establishments in their place of work. Access to class IV gaming establishments [i.e. betting offices] is prohibited for minors [i.e. under 18 years of age]. The playing of games of chance in class III gaming establishments [i.e. bars] and the playing of games of chance and betting in class IV gaming establishments are prohibited for minors. This prohibition for minors also applies for betting authorized outside the class IV gaming establishments. Playing games of chance via information-society instruments [i.e. online], with the exception of betting, is prohibited for persons under 21 years of age. Betting via information-society instruments is prohibited for minors.”

In accordance with this provision, to the extent an esports tournament would be considered a game of chance, it would thus be prohibited for minors to participate therein.



## Selection of participants

### Is it possible to place any restriction to the players that can participate in an esports tournament?

Criteria of selection of participants need to be objective, transparent and non-discriminatory.



## Contracting esports players

### Are there particular requirements for T&Cs of esports tournaments?

There are no specific rules concerning the T&Cs of esports tournaments under Belgian law.

Where the esports tournament is directed to consumers, the T&Cs should be drafted in accordance with Belgian consumer laws. Where the esports tournament only targets professional players, the rules on unfair commercial practices against other persons than consumers apply. In this regard, it should be noted that the Act of 4 April 2019 on the abuse of economic dependence, unfair terms and unfair practices in B2B relationships has amended the BCEL to introduce a number of new provisions applying to contracts in a B2B-context (similar to the restrictions already applicable in a B2C-context). In particular, the part of the Act on ‘unfair terms’ prohibits contractual terms creating or resulting in a “manifest imbalance” between the rights and obligations of the parties. This part of the Act has entered into force on 1 December 2020. The relevant legislation can be found in Book VI on market practices and consumer protection.

Additionally, the mechanics of the esports tournament shall be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations and intellectual property laws.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

There are currently no laws governing the selection of winners but it is strongly recommended to set out requirements (e.g. age) and restrictions in a T&Cs document, especially as esports will often be played by young consumers (filing the T&Cs with a notary public is not required by law).

There is no formal requirement to involve an external jury, judge or panel to select the winners, but doing so may decrease the risk of disputes afterwards.

Lastly, article 10 of the Royal Decree on virtual sporting events on 4 May 2018 provides that *“It is prohibited to determine the outcome of the virtual sporting event in function of the stakes”*.



### Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers can only enforce contractual provisions set out by the T&Cs of the tournament.



### Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

Generally, none.



### Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

Where the Belgian gambling laws apply, the online esports tournaments can fall under the online gambling licensing regime.



### Other local requirements

**Are there any other key local requirements?**

In accordance with the Royal Decree of 4 May 2018 on games of chance about virtual sporting events, games of chance concerning virtual sporting events are considered bets on virtual sporting events and are equated with automatic games of chance (and thus not considered as bets on sporting events), of which the outcome is solely determined by a remote server. The consequence thereof is that such bets should be made in class IV gambling establishments [i.e. premises exclusively intended to take bets]. The chances of winning relating to virtual sporting events, as well as the associated profit opportunities, depend on luck and

are determined by a server that must be controlled by an independent third party, which must own a class E license [i.e. a license for manufacturers, installers and maintenance companies of slot machines]. Both the software of the supplier’s server and the terminals in the various gaming establishments must be approved by the Gaming Commission. The server must – by analogy with the provisions concerning games of chance operated by means of information-society instruments – be located in Belgium in order to enable the necessary controls. The terminals may only be used for the acceptance of games of chance on virtual sporting events via a secure connection to the supplier. Organizers of games of chance on virtual sporting events are also prohibited to refer to or use references to names of existing sports teams, names of existing individual players and/or coaches, existing logos, or existing competitions, events or existing leagues.

In contrast thereto, bets on sporting events and on horse racing can also be offered, as a sideline activity (ancillary activity), by newspaper traders (news agents), natural or legal persons, who are registered as commercial enterprises in the Crossroads Bank for Enterprises and who hold a class F2 licence (required for accepting bets), as long as they are not offered in places where alcoholic beverages are sold for consumption on the premises.



### Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

If the esports tournament qualifies as a game of chance, the organizer should obtain a license from the Belgian Gaming Commission. In addition, sufficient time should be set aside to deal with data protection issues (e.g. ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).



### Translations

**Are the terms of the esports tournament required to be translated by law?**

Yes, Dutch and French language versions are required, and a German language version is advisable, if the esports tournament targets consumers.



## Penalties for non-compliance

### What are the penalties for non-compliance?

In the case of unlawful operation of games of chance:

- For individuals: fines from EUR800 to EUR800,000 and/or imprisonment from 6 months to 5 years;
- For companies: fines from EUR24,000 to EUR1,600,000.

In the case of advertising, facilitating the operation or recruiting players for unlawful games of chance:

- For individuals: fines from EUR208 to EUR200,000 and/or imprisonment from 1 month to 3 years;
- For companies: fines from EUR4,000 to EUR576,000.

Finally, there is the possibility that the personal data processing aspects of the esports tournament could breach GDPR, which has maximum fines of up to the higher of:

- EUR20 million; or
- 4% of the promoter's worldwide annual revenue.

## Key contact



### Alexis Fierens

#### Partner

DLA Piper UK LLP

T +32 25 00 15 92

[alexis.fierens@dlapiper.com](mailto:alexis.fierens@dlapiper.com)

Brazil



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Criminal Misdemeanors Act Law No. 3,688/1941 (Lei de Contravenções Penais). In accordance to such law, it is forbidden the practice of "games of chance", which are defined as (i) a game in which loosing or winning depends exclusively or mainly on the element of luck, (ii) bets on horses outside the racetrack or other places where such races are authorized, and (iii) bets over any other sports competition.

Federal Law No. 13.756/2018, recently enacted by Brazilian government, authorizes the Ministry of Finance to elaborate rules for licensing the exploration of sports betting in Brazil. This is still subject to further regulation.

Specially in relation to poker game, Brazilian regulation is very inconsistent. There are court decisions which support that this game is considered a sport and, therefore, its practice would be allowed in Brazil under certain limitations, as well as court decisions that support that poker is a gambling game, which means that its practice would be prohibited in Brazil. In this sense, from a conservative perspective, we assume that poker is considered a gambling game and, therefore, its practice is subject to the provisions of the Criminal Misdemeanors Act.

## With regard to the applicability of prize promotion regulations to esports activities

Federal Law No. 5.768, of December 20, 1971 ('First General Regulation on Promotions')

Decree No. 70.951/72, of August 9, 1972 ('Decree 70.951') (provides specific regulations on Promotions)

Ordinance MF No. 41/2008, of February 19, 2008 ('Ordinance 41') Updated general regulation of promotions

Ordinance MF No. 422/2013 (related exclusively to Cultural Competitions)

Federal Law No. 13,756/2018, of December 18, 2018 (provides new regulations on Promotions – changes the competence to deal with matters relating to Promotions from CAIXA to SEFEL/MF)

## With regard to the advertisement of esports related activities

Federal Law no. 8,078/90 (the 'Consumer Protection Code')

Brazilian Code of Self-regulating Advertisement of the Advertisement Self-Regulatory Council (CONAR)

## With regard to the protection of intellectual property rights as part of esports activities

Federal Law no. 9,279/96 setting out Brazilian law on industrial property regulating, among others, trademarks and patents

Federal Law no. 9,610/98 setting out Brazilian law on copyright and connected rights

## With regard to the processing of personal data as part of esports activities

Federal Law 13,709/18 providing regulation on data protection in Brazil (LGPD)



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

The general presumption in Brazil is against the extraterritoriality of its laws – i.e. being understood that when a statute does not give a clear indication of extraterritorial application, it has none.

However, some Brazilian laws contain extraterritoriality effects, such as the Brazilian General Data Protection Regulation ("LGPD"), which applies to personal data collected from individuals located in Brazil, to any data processing carried out in Brazil, and to the offering of goods and services to individuals located in Brazil.

The Consumer Protection Code also sets forth grounds for any consumer relation with Brazilian consumers, whether it happens locally or through the internet. This law provides protective concepts related to consumer relations and rights, as well as obligations to service providers.

In this same sense, the Brazilian Internet Act (Federal Law no. 12,965/2014), aside from regulating the procedure and establishing standards for disclosure of Internet metadata and private communications content, provides that internet service providers which are engaged in services offered to Brazilian consumers must abide by Brazilian law. That is the case for *“data collected in national territory and to the content of communications, when at least one of the terminals [devices] is located in Brazil”* and *“even if the activities are carried out by a foreign-based legal entity, provided that it offers services to the Brazilian public or at least one member of the same economic group has an establishment in Brazil”*.

Based on that, in general, entities operating abroad shall comply with Brazilian laws in case esports events are addressed to Brazilian competitors/consumers or takes place in Brazil.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not yet regulated as sports in Brazil. However, it is a hot topic under debate among legislators and gamers at the moment.

In this sense, the following recent debates are noteworthy:

- There’s a bill of law still under discussion within the Parliament (PL 383/2017), which has been criticized by gamers because, among other issues, it intends to exclude specific kinds of games, so it will probably not pass as it is written now.
- There are other projects also under discussions in order to amend Law no. 9615/98 (also called “Lei Pelé”) to include esports as sports.
- Legislators of the State of São Paulo have also tried to regulate esports, but the Governor has not approved the proposed bill of law.
- In the State of Paraíba, though, Law 11.296/2019 has passed in January 2019, recognizing esports as sports, however, not bringing much detail and regulation nor substantially changing the way esports is commonly treated in the country. It was a step further its recognition in the Country though, and it appears that 2020/2021 will be an important period regarding esports regulations in Brazil.

The relationship among athletes and teams usually follows the rules of the above-mentioned Lei Pelé, applicable to common sports.

In view of the above, we suggest any interested parties to keep closely following the industry’s next steps due to its fast growth – Brazil has the third highest esports audience of the world.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

As mentioned above, esports are still not regulated in Brazil. Despite the existence of different bills of law aiming to recognize it as a modality of sports and regulate its operations, currently esports tournaments in Brazil are usually operated and ruled by the publishers of the videogames, which own the copyrights of the videogames.

Based on that, there is no specific certification for the usage of videogames in esports tournaments in Brazil, other than regular existing certifications for sale (such as age rating classification).

In general, the authority in charge for approving prize promotion operations in Brazil already recognize esports tournaments as a modality of sport and, therefore, not a contest subject to its analysis and certification. However, this should be assessed under each specific scenario for confirmation of the authority.



### Sponsorship of esports tournaments

#### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

In general, Federal Law no. 11,438/2006, also known as the Law of Sports Incentive, provides that individuals and corporations can encourage sports, Olympics, Paralympics and other projects approved by the government through donations or sponsorships, in which a percentage may be deducted from the amount due to Income Tax. However, as esports tournaments are usually organized by self-sufficient private companies, it is unlikely that the sponsorship of such tournaments is granted by public authorities.

Furthermore, CONAR (National Council of Advertisement Self-Regulation) provides guidelines and orientations regarding advertisement and brand association, including some limitations in determined circumstances, such as in case of brands of tobacco and alcoholic beverages, which shall not be associated with Olympic sports.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

In principle, there's no general regulation specifically for the advertisement of videogames during esports tournaments. However, considering that a tournament organizer might impose specific rules for that tournament's advertisers, as well as the applicability of specific Ancine (Brazilian Audiovisual Agency)'s rules regarding registration of ads audiovisual works, as well as CONAR's guidelines, depending on the tournament and the form of advertisement, we recommend specific further analysis on a case by case basis.

As an example of CONAR's guidelines, children and teenagers should not appear as advertising models in any advertisement that promotes consumption of any goods and services incompatible with their status, such as firearms, alcoholic beverages, cigarettes, fireworks and lotteries, and all other products subject to legal restriction.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

As esports tournaments are usually organized by the videogame publishers, at this point, there is no restriction for requesting the payment of participation fees from players and competitors.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Although there's no specific esports regulation in force, the participation of minors in any events in Brazil is strictly regulated and should follow the rules of Law 8069/90 – Children and Adolescent's Statute – and related local rules and legislations.

Please note that Brazilian Law considers those under age 16 as absolutely incapable and those aged 16 to 18 years as relatively incapable. In this sense, in order for a minor to participate in esports tournaments, the minor's legal representative must have previously authorized such participation in writing.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

Yes, there is no regulation restricting the autonomy of organizers to define the selection, participation and classification criteria of players and teams in a particular tournament.

In any case, it is recommendable that the criteria of selection of participants are objective, transparent and clearly informed to participants.

However, considering the lack of specific esports regulations and the grey areas that this implies, we recommend a deeper case-by-case analysis to assess eventual extensions of existing usual sports' regulations to esports in relation to the selection and engagement of participants.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

Existing legislation in Brazil is also silent in this regard in relation to esports tournaments. If intended for Brazilian consumers and participants, T&Cs shall be drafted in accordance with all applicable Brazilian laws (such as consumer and data protection laws, for example).

In case the esports tournament is eventually understood as a modality of contest, subject to the prize promotion regulations, then T&Cs shall be drafted also in accordance with the necessary information and applicable laws regarding promotions.

It is also important to note that the lack of specific legislation towards esports opens up space to the rise of further legal discussions in relation to the application of different in force legislation to esports, such as, for example, whether the employment laws and/or the provisions of “Lei Pelé” (Law no. 9615/98) should apply to the engagement of esports athletes. Also, negotiations of rights of transmission of esports tournaments, as well as the image and likeness’ rights of athletes, demand specific understandings of Brazilian applicable laws. In this regard, we recommend further analysis and assessment on the legal system as a whole in order to provide a deeper legal opinion on this subject.

In addition to that, organizers of esports tournaments may impose specific rules for contacting and contracting players.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

Requirements for the selection of winners and award of prizes are subject to general laws and are usually defined by the publishers/esports tournaments organizers.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Leading organizers of esports tournaments pre-define the rules for participation in a tournament under its regulation, which implies the provision of sanctions against players and teams whose behavior may be framed as unethical, anti-fair play or illegal.

Additionally, since Brazil has adopted internal anticorruption laws, such provisions should apply to any contractual relations in all industries, including esports.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

As esports tournaments are generally not considered subject to prize promotion regulations, then no restriction on the type of prizes that can be awarded is provided by the current legislation.

In case prize promotion regulations is applicable, prizes would need to be restricted to the options provided by the law, including not being permitted to pay the prize in cash.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

In Brazil, due to the lack of regulations regarding esports tournaments, no distinction is provided by applicable laws in relation to online or land-based esports tournaments.

However, both kind of tournaments are subjected to applicable laws that should be analyzed on a case-by-case scenario (for example, local regulations for public events should apply to production of land-based tournaments, including

necessary authorizations and permits, etc., and online tournaments should comply with local applicable laws and regulations). Additionally, the communication to the public as well as any audiovisual works resulted from the shooting and transmissions of such events might be subjected to specific local laws and regulations.

Based on this scenario, a case-by-case analysis is recommendable to assess the intended mechanic and its compliance with the Brazilian requirements and local laws.



## Other local requirements

### Are there any other key local requirements?

As mentioned above, esports are currently not regulated in Brazil. Different bills of law are under discussion, both in federal and state sphere, yet not having support from the Brazilian esports community, which fears the bureaucratization of the tournaments and the practice of the sport. In general, private entities organizing the competitions are entitled to define the rules and practices of the esports tournaments in Brazil.

Based on this scenario, a case-by-case analysis of prospective esports tournaments is recommendable to assess the intended mechanic and its compliance with the Brazilian requirements and local laws.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Specific timing for the performance of contest applies only if they are subject to prize promotion regulations and the need of registration of the contest with the competent authority. In this case, the contest should be filed for authorization with at least 40 days in advance of the intended initial date.



## Translations

### Are the terms of the esports tournament required to be translated by law?

Yes, under Brazilian law, documents need to be translated for Brazilian Portuguese.



## Penalties for non-compliance

### What are the penalties for non-compliance?

Infringement may arise in case of misleading advertisement, consumer law violation, copyrights violations, prize promotion regulations breach, etc. However, due to the lack of specific regulation, no explicit penalty is provided in this regard and possible penalties should be analyzed on a case-by-case scenario.

## Key contacts



### Paula Mena Barreto

#### Partner

Campos Mello Advogados in cooperation with DLA Piper  
T +55 21 3262 3028  
paula.menabarreto@cmalaw.com



### Marcus Bitencourt

#### Partner

Campos Mello Advogados in cooperation with DLA Piper  
T +55 21 3262 3008  
mbitencourt@cmalaw.com



### Felipe Hermanny

#### Partner

Campos Mello Advogados in cooperation with DLA Piper  
T +55 11 3077 3519  
felipe.hermanny@cmalaw.com

# Canada



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

In Canada, gambling is a heavily regulated activity that is subject to both criminal and administrative penalties. All criminal law in Canada is legislated by the federal government and enforced by a combination of federal, provincial, and municipal agencies. The *Criminal Code*, RSC, 1985, c C-46 (the "*Criminal Code*") provides criminal sanctions for lotteries, games of chance, and games of mixed chance and skill, with limited exceptions.

The federal government has delegated the power to regulate gambling to the provinces, via the *Criminal Code*<sup>1</sup>, so each province has the authority to regulate gambling within its borders. As such, gambling operations and lotteries are only permitted to operate if they possess a valid license from the local provincial gambling authority.<sup>2</sup>

In order for an activity to be prohibited under the *Criminal Code* as gambling it must include the following elements:

- (1) a contestant provides consideration to participate,
- (2) the game is one of chance or mixed chance and skill, and
- (3) the contestant could win a prize of goods, wares or merchandise.<sup>3</sup>

There is also a section of the *Criminal Code* that prohibits contests where there is an entry fee and the possible prize to be won is contingent upon the total amount entry fees collected by the operator, regardless of whether the contest involves chance<sup>4</sup>. While this

provision is intended to apply to pyramid schemes, it has application in esports, even purely skill-based esports, when the prize pool is arguably funded by participants.

**Game of chance or mixed chance and skill:** If the game is one of pure skill, then the *Criminal Code's* primary gambling prohibitions will not apply (but as mentioned above, one still needs to consider the prize pool mechanics). A recent Ontario Court of Appeal decision upheld the long standing principle that any game where there is any systematic resort to chance, regardless of whether this element of chance is dominant or otherwise, is a game of mixed chance and skill.<sup>5</sup> The Supreme Court of Canada would seem to agree with the Ontario Court of Appeal, as it has stated that it is not necessary to determine which of skill and chance is the dominant characteristic, since 'games' include those of chance and those of mixed skill and chance.<sup>6</sup>

The provisions relating to lotteries differ slightly from the offence noted above. The lottery provisions apply if there is consideration, a mode of chance and a prize consisting of any property.<sup>7</sup> These provisions will not apply if there is any element of skill.<sup>8</sup>

As noted above, each province has legislation regulating gambling within the province. The primary gambling laws in each province are:

### ALBERTA:

- *Gaming Liquor and Cannabis Act*, RSA 2000, c G-1

### BRITISH COLUMBIA:

- *Gaming Control Act*, SBC 2002, c 14

<sup>1</sup> *Criminal Code*, RSC 1985 c C-46 s. 207

<sup>2</sup> For example, in Ontario, the Alcohol and Gaming Commission of Ontario and in Quebec, La Régie des alcools, des courses et des jeux.)

<sup>3</sup> *Criminal Code*, RSC 1985 c C-46 s. 206(1)(f).

<sup>4</sup> *Criminal Code*, RSC 1985 c C-46 s. 206(1)(e)

<sup>5</sup> *Play for Fun Studios Inc. v. Ontario (Alcohol and Gaming Commission of Ontario)* 2019 ONCA 648 at para 24.

<sup>6</sup> *R v Ross* [1968] SCR 786 at para 12; *R v Riesberry* 2015 SCC, affirming 2014 ONCA 744 at para 16.

<sup>7</sup> *Criminal Code*, RSC 1985 c C-46 ss. 206(1)(a)-(d)

<sup>8</sup> *Roe v R* [1949] SCR 652, at para 12.

**MANITOBA:**

- *Liquor, Gaming and Cannabis Control Act*, SM 2013, c 51 Sch B
- *Manitoba Liquor and Lotteries Corporation Act*, SM 2013, c 51 Sch A

**NEW BRUNSWICK:**

- *Gaming Control Act*, SNB 2008, c G-15

**NEWFOUNDLAND AND LABRADOR:**

- *Lotteries Act*, SN 1991, c 53.

**NORTH WEST TERRITORIES:**

- *Lotteries Act*, RSNWT 1988, c L-11
- *Western Canada Lottery Act*, SNWT 2018, c 5

**NOVA SCOTIA:**

- *Gaming Control Act*, SNS 1994-95, c 4

**NUNAVUT:**

- *Lotteries Act*, RSNWT 1988, c L-11

**PRINCE EDWARD ISLAND:**

- *Lotteries Commission Act*, RSPEI 1988, c L-17

**ONTARIO:**

- *Gaming Control Act*, 1992, SO 1992, c 24
- *Ontario Lottery and Gaming Corporation Act*, 1999, SC 1999, c 12 Sch L

**QUEBEC:**

- *Act Respecting the Société des Loteries du Québec*, CQLR 1990, c S-13.1
- *Act Respecting Lotteries, Publicity Contests, and Amusement Machines*, CQLR 1990, c L-6

**SASKATCHEWAN:**

*Alcohol and Gaming Regulation Act*, 1997, SS 1997, c A-18.011

*The Saskatchewan Gaming Corporation Act*, SS 1994, c S-18.2

**YUKON:**

*Lottery Licensing Act*, RSY 2002, c 143

**With regard to the applicability of prize promotion regulations to esports activities**

The *Criminal Code* provides criminal sanctions for advertising a plan for awarding a prize of any property by any mode of chance<sup>9</sup>.

The *Competition Act*, RSC 1985, c C-34 (the "**Competition Act**") mandates that a person who, for the purpose of promoting a product or business interest, conducts a contest, lottery, game of chance or skill or mixed chance or skill must meet the following requirements<sup>10</sup>:

- there must be adequate and fair disclosure of the number and approximate value of the prizes, of any regional allocation of prizes, of the chances of winning when the total number of prizes in a population is known, whether any purchase is required, whether a skill-testing question is required, the contest closing date and any fact within the knowledge of the person that affects materially the chances of winning;
- the distribution of the prizes must not be unduly delayed; and
- the selection of participants or distribution of prizes must be made on the basis of skill or on a random basis in any area to which prizes have been allocated.

Information Bulletin – Promotional Contests – Section 74.06 of the *Competition Act*, October 16, 2009 provides information and guidance in applying section 74.06 of the *Competition Act*. Additionally, the Competition Bureau will provide written opinions for a fee (the amount of the fee depends on the requesting person's province of residence).

Quebec's *Act Respecting Lotteries, Publicity Contests, and Amusement Machines* is much more stringent than the federal legislation on the offering of "promotional contests", which are defined very broadly as "a contest, a lottery scheme, a game, a plan or an operation which results in the awarding of a prize, carried on for the object of promoting the commercial interests of the person for whom it is carried on." While many

<sup>9</sup> Criminal Code, RSC 1985 c C-46 s. 206(1)(a)

<sup>10</sup> *Competition Act*, RSC, 1985 c C-34 s. 74.06; Information Bulletin – Promotional Contests – Section 74.06 of the *Competition Act*, October 16, 2009 (<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03126.html>).

esports tournaments are one-off competitions that do not promote the commercial interests of the organizers, this is not true of all esports activities. For example, there is unofficial guidance from the Quebec authority responsible for such Act that esports tournaments that are “a form of competition”, allowing gamers to compete to determine who is the most skillful, are not promotional contests.<sup>11</sup> However, we note that such guidance is (a) not binding, and (b) quite limiting when considering that many esports tournaments and activities are, in fact, a form of commercial promotion, particularly when the organizer is a publisher or developer, or where the esports are essentially a form of promotion for the game. As such, care must be taken when offering esports activities in the province of Quebec, because should the legislation in fact apply, a number of additional requirements will be placed on the contest:

- Filings with the Quebec Regie, including in some cases duties and a security bond based on the prize pool size.
- Rules with mandatory language in both official languages submitted to the Regie and locked in advance, both before publication of the contest and before the contest itself.
- Mandatory reporting of results
- Mandatory dispute resolution with the Quebec Regie.

The law known as Canada’s Anti-Spam Law (“CASL”)<sup>12</sup> prohibits sending commercial electronic messages unless the recipient has consented to receiving the message and the message conforms to the content requirements and contains an unsubscribe mechanism. There are some limited exceptions. CASL also prohibits installing computer programs on another person’s computer system without consent.

CASL contains potentially stiff penalties, including administrative penalties of up to CAD1 million per violation for individuals and CAD10 million for corporations (subject to a due diligence defense).

CASL also sets forth a private right of action permitting individuals to bring a civil action for alleged violations of CASL (CAD200 for each contravention up to a maximum of CAD1 million each day for a violation of the provisions addressing unsolicited electronic messages). This private right of action has not yet been brought into force (and may never be). The largest single penalty issued to date was CAD1,100,000 however it was reduced on appeal to CAD200,000. Of note, CASL also provides for director and officer liability and the largest single penalty issued personally to a director or officer to date under CASL is CAD100,000.

### With regard to the advertisement of esports related activities

The *Criminal Code* prohibits advertising any offer or inducement to bet on the result of a contest, or a result of or contingency relating to any contest.<sup>13</sup>

The *Competition Act* prohibits misleading advertising and states that no person shall knowingly or recklessly make a representation to the public that is false or misleading in a material respect for the purpose of promoting the supply or use of a product or any business interest.<sup>14</sup>

Each province also has consumer protection legislation prohibiting deceptive practices and unconscionable practices. These acts should be reviewed for specific requirements.

For instance, in Quebec, the *Consumer Protection Act*, QCLR c P-40.1, prohibits commercial advertising directed at anyone under the age of 13.<sup>15</sup> In addition, Quebec does not allow “free trials” that automatically convert to paid trials. The rest of Canada permits it provided that fair and adequate disclosure is made in advance and the distance sales contract itself, is clear that the automatic purchase will occur. In practice, if such an automatic conversion is to occur, this is clearly noted at the point of sale as well as in the distance sales contract itself. As part of this process, companies must clearly disclose the applicable cancellation rights, but certain cancellation rights are generally not mandated for online video games.

<sup>11</sup> Letter from the Quebec Régie des alcools, des courses et des jeux to La fédération québécoise des sports électroniques dated November 15, 2016.

<sup>12</sup> An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio- television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, SC 2010, c 23

<sup>13</sup> *Criminal Code*, RSC 1985 c C-46 s. 202(1)(h).

<sup>14</sup> *Competition Act*, RSC, 1985 c C-34 s. 52(1).

<sup>15</sup> *Consumer Protection Act*, QCLR c P-40.1 s. 248.

Additionally, in Ontario the *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A, prohibits advertising websites that accept bets over the internet that are operated contrary to the *Criminal Code*.<sup>16</sup>

The primary consumer protection laws in each province are:

Alberta: *Consumer Protection Act*, RSA 2000, c C-26.3

British Columbia: *Business Practices and Consumer Protection Act*, SBC 2004, c 2

Manitoba: *Consumer Protection Act*, RSM 1987, c C200

New Brunswick: *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1

Newfoundland and Labrador: *Consumer Protection and Business Practices Act*, SN 2009, c C-31.1

North West Territories: *Consumer Protection Act*, RSNWT 1988, c C-17

Nova Scotia: *Consumer Protection Act*, RSNS 1989, c92

Nunavut: *Consumer Protection Act*, RSNWT 1988, c C-17

Prince Edward Island: *Consumer Protection Act*, RSPEI 1988, c C-19

Ontario: *Consumer Protection Act*, RSO 1990, c C.31

Quebec: *Consumer Protection Act*, QCLR c P-40.1

Saskatchewan: *Consumer Protection and Business Practices Act*, SS 2013, c C-30.2

Yukon: *Consumers Protection Act*, RSY 2002, c 40

The Canadian Code of Advertising Standards (the "**Advertising Code**"), which is the Canadian advertising industry's principal instrument of self-regulation, sets the criteria for acceptable advertising in Canada. It requires the following:<sup>17</sup>

- advertisements must not make misleading claims;

- advertisements must not omit relevant information if it results in misleading advertising;
- all pertinent details of an advertisement must be clearly stated;
- disclaimers must not contradict more prominent aspects of the message and should be presented in a clearly legible and/or audible manner;
- all advertising claims and representations must be supported by reliable evidence;
- the advertiser must be clearly identified (except for "teaser advertisements" as defined in the Advertising Code); and
- advertisements must not appear to exploit, condone or incite violence;
- advertising that is directed to children must not exploit their credulity, lack of experience or their sense of loyalty, and must not present information that might result in their harm.

Some provinces have established policies setting out standards for advertising related to gambling. For instance, British Columbia's Advertising and Marketing Standards policy states that advertising of a gaming event or scheme must not be immoral or obscene, and requires that advertising materials contain a responsible gambling message, information on the odds of winning must be clearly stated and advertising materials must not appear to be directed primarily at minors.<sup>18</sup>

There are specific laws relating to advertising of: food, drug and related products; alcoholic beverages; tobacco products; and cannabis products.

Generally, contracts with children are voidable by a court if found not to be in the best interests of the child. The court will look to the particular circumstances of the child and the nature and context of the agreement in making this determination. There is no bright line test however courts will generally enforce contracts regarding the provision of the necessities of life (I.e. food, clothing and medicine). The best practice in Canada is to draft terms and conditions that stipulate that minors either cannot purchase or use the game

<sup>16</sup> *Consumer Protection Act*, SO 2002, c 30 s. 13.1.

<sup>17</sup> <https://adstandards.ca/code/the-code-online/>

<sup>18</sup> <https://www2.gov.bc.ca/assets/gov/sports-recreation-arts-and-culture/gambling/gambling-in-bc/stds-advertising-marketing.pdf>

or must have parental consent to agree to the terms. Nevertheless, there is no contractual language that removes a court's discretion in this case.

For reference, the age of majority is 19 in British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Yukon and 18 in Ontario, Quebec, Alberta, Prince Edward Island, and Saskatchewan.

As set out above, CASL regulates electronic commercial communications, and offers to participate in esports activities would often qualify. Electronic communications about commercial esports activities must not be sent to or from Canadians unless (a) the recipient has expressly consented (or under the limited rules of CASL, such consent is not required or implicitly given), and (b) the communication includes prescribed information about the sender as well as a clear and easy-to-perform unsubscribe function.

### With regard to the protection of intellectual property rights as part of esports activities

- *Trade-marks Act*, RSC 1985, c T-13 sets out Canadian law on trademarks.
- *Patent Act*, RSC, 1985, c P-4 sets out Canadian law on patents.
- *Copyright Act*, RSC, 1985, c C-42 (the "**Copyright Act**") sets out Canadian law on copyright

### With regard to the processing of personal data as part of esports activities

*Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 ("*PIPEDA*") regulates the collection, use and disclosure of individuals' personal information by private-sector organizations in the course of commercial activity.

Organizations must take the following steps to comply with PIPEDA:

- designate an individual who is accountable for the organization's privacy compliance;
- when collecting personal information, the organization must explain the purposes for which the information is being collected;
- the organization must have the individual's consent for the collection, use or disclosure of personal information for the stated purposes. Consent can be express or implied, but organizations must carefully consider relying on implied consent;
- the organization must not collect more personal information than is necessary for its stated purposes. The organization must also not use or disclose the information for any other purposes without the individual's consent;
- the organization must not keep the information for longer than the organization needs it for its stated purposes. Once personal information is no longer required, it should be disposed of securely;
- the organization must ensure that the information is accurate and complete;
- the organization must protect all personal information by taking reasonable precautions to keep it secure;
- the organization must make available information about their policies and practices with respect to the management of personal information; and
- the organization must institute policies regarding its privacy practices and its management of personal information, and must make those policies available upon request

Alberta, British Columbia and Quebec have provincial laws which are substantially similar to PIPEDA and govern in PIPEDA's place in those jurisdictions. The provincial privacy laws that regulate personal data in those provinces are:

- Alberta: *Personal Information Protection Act*, SA 2003, c P-6.5
- British Columbia: *Personal Information Protection Act*, SBC 2003, c 63
- Quebec: *Act Respecting the Protection Of Personal Information In the Private Sector*, CQLR c P-39.1



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Entities operating abroad should comply with Canadian laws where there is a 'real and substantial connection' to Canada, which is a fact-specific determination. While the Supreme Court of Canada has stated that federal legislation is presumed not to have extra-territorial effect in the absence of clear words or necessary implication to the contrary, it has also found that at least some Canadian laws, such as the *Copyright Act*, will apply if there is a real and substantial

connection to Canada.<sup>19</sup> The Supreme Court of Canada has also found that the *Criminal Code* will apply where there is a real and substantial link between an offence and Canada.<sup>20</sup> Additionally, some of the provisions of the *Criminal Code* providing for criminal sanctions for lotteries and games of chance apply to events that take place both in and out of Canada. For instance, the *Criminal Code* specifically states that the provisions which create offences relating to lotteries and games of chance apply to advertising of a foreign lottery, selling tickets in a foreign lottery and managing an operation for determining the winners of a foreign lottery.<sup>21</sup> The *Criminal Code* also states that it is an offence to provide information intended for use in connection with betting on any game of chance or mixed chance and skill, whether the game takes place in or out of Canada.<sup>22</sup>

games carrying an ESRB rating are contractually bound to follow the industry-adopted Principles and Guidelines for Responsible Advertising Practices.<sup>23</sup> Publishers of digitally delivered games and apps are strongly encouraged to provide consumers with clear and prominent disclosure of ESRB rating information as well as comply with the ESRB advertising and marketing guidelines.<sup>24</sup>

If gambling will be part of the esports tournament, a licence will be necessary under the provincial legislation regulating gambling.

### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Canada and there is no dedicated legal or regulatory regime applicable to esports.

### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

There are no specific laws requiring videogames to be certified to be used in esports tournaments. The Entertainment Software Rating Board (“**ESRB**”) is a self-regulatory body that assigns computer and video game content ratings and enforces industry-adopted advertising guidelines. Publishers of physical (boxed)

### Sponsorship of esports tournaments

#### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

The *Tobacco and Vaping Products Act*, SC 1997, c 13 prohibits the use of tobacco and vaping product-related brand elements in the promotional material related to an entity or event.<sup>25</sup>

The *Cannabis Act*, SC 2018, c 16 prohibits references to cannabis, cannabis accessories or services related to cannabis, and the name of a producer, seller or distributor of cannabis, cannabis accessories or services related to cannabis in a promotion used in the sponsorship of an event.<sup>26</sup>

Each province also has consumer protection legislation that should be reviewed for specific requirements within that province. For instance, as noted above, the *Quebec Consumer Protection Act* prohibits commercial advertising directed at persons under the age of 13, and the *Ontario Consumer Protection Act* prohibits advertising websites that accept bets over the internet that are operated contrary to the *Criminal Code*.

<sup>19</sup> Society of Composers, Authors & Music Publishers of Canada v Canadian Assn of Internet Providers, 2004 SCC 45 at paras 54 and 60.

<sup>20</sup> Libman v R, 2 SCR 178 at para 74

<sup>21</sup> Criminal Code, RSC 1985 c C-46 s. 206

<sup>22</sup> Criminal Code, RSC 1985 c C-46 s. 202(1)(f).

<sup>23</sup> <https://www.esrb.org/faqs/#does-the-esrb-have-any-restrictions-on-how-a-game-can-be-manufactured>

<sup>24</sup> <https://www.esrb.org/faqs/#does-the-esrb-have-any-restrictions-on-how-a-game-can-be-manufactured>

<sup>25</sup> Tobacco and Vaping Products Act, SC 1997, c 13 ss. 24(2), 30.3(2)

<sup>26</sup> Cannabis Act, SC 2018, c 16 s. 21.

There are no laws regulating sponsorship of esports tournaments specifically, but the *Criminal Code* provides for criminal sanctions for advertising or publishing a plan for disposing of any property by any mode of chance.<sup>27</sup> An entity should also review the terms and conditions of their provincial gambling licence to determine whether there are any restrictions regarding sponsorship.

With regard to the broad advertising regulations under the *Competition Act*, the “deceptive” or “unfair” acts or practice that is most applicable in this space involves sponsored content and “astroturfing” which means content that is presented as an organic or authentic customer experience but in reality, is a paid advertisement or endorsement. Broadly speaking, it is best practice to ensure that advertisements are clearly disclaimed as such and advertisers take steps to ensure that a reasonable person would not be confused as between advertisements (or sponsorships) and the games and content provided.

With regard to third party advertising that may be a part of an esports tournament or broadcast, in Canada, website and platform operators are typically not liable for misrepresentations in third-party advertising hosted on their apps or websites provided that they (i) are not knowingly publishing false or misleading advertising, (ii) do not exercise a degree of control over the advertisements, and (iii) are acting as a mere disseminator or distributor of such advertisements.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

In addition to the regulations of general application with respect to advertising noted above, the *Competition Act* requires<sup>28</sup> persons operating a game of chance, skill, or a game of mixed chance and skill, for the purposes of promoting the supply or use of a product, or promoting, any business interest to do the following:

- Provide adequate and fair disclosure of the number and approximate value of the prizes and any other fact within the knowledge of the person operating the game, that materially affects the chances of winning for a given participant;
- Ensure that the distribution of prizes is not unduly delayed; and
- Ensure that the selection of participants or the distribution of prizes is based either on skill or on a random basis.

For loot boxes and similar mechanics which are commonly used in the advertising and promotion of games, the main concern under the *Competition Act* is the adequate and fair disclosure of odds. The Competition Bureau of Canada (the “**Bureau**”), the agency responsible for administering the *Competition Act*, has issued enforcement guidelines which state that adequate and fair disclosure must be made at the point of sale. That is to say, a consumer ought to be able to access the odds prior to purchasing any item which permits them to engage the loot box mechanic. In the mobile game context, the best practice is to display the odds and any other factors which material affect the chance of winning, clearly in the in-game store.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

As noted above, the *Criminal Code* provides criminal sanctions for lotteries and games of chance where the contestant provides consideration to participate, the game is one of chance or mixed chance and skill and the contestant could win a prize. Therefore, if there is an element of chance and the participant could win a prize, the addition of consideration may mean that the activity could be an offence under the *Criminal Code*. However, there is also a section of the *Criminal Code* that prohibits contests with an entry fee and a prize that is based on the total amount of entry fees collected by the

<sup>27</sup> Criminal Code, RSC 1985 c C-46 s. 206(1)(a)

<sup>28</sup> Competition Act, RSC, 1985 c C-34 s. 74.06.

event operator. Accordingly, it is risky to charge players to participate in esports tournaments involving prizes. An entity should also review the terms and conditions of their provincial gambling licence to determine whether there are any restrictions on the price which they are permitted to charge participants.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

As noted above, under Canadian law, the capacity of minors to contract is limited and there is always risk that if challenged, any agreement with a minor may be deemed void if a court finds it contrary to the interests of the minor and the contract is not for the necessities of life. In case of individuals younger than the ages of majority listed above, it is common for the parents or legal guardian of the minor to be an additional signatory to the agreement.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

There are no laws that specifically prohibit an organization from restricting participation in events generally or esports tournaments specifically. However, restrictions must comply with the provinces' Human Rights Codes which prohibit discrimination based on factors such as: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

The entity should consult the relevant provincial Human Rights Code to determine the prohibited grounds of discrimination. An entity should also review the terms and conditions of their provincial gambling licence to determine whether there are any restrictions on the entity's ability to restrict participants.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

There are no laws setting out specific requirements for the terms and conditions of esports tournaments.

As noted above, the disclosure requirements set out in the *Competition Act* must be complied with if a person promotes a product or business interest by conducting a contest, lottery or game of chance or skill, or mixed chance or skill.<sup>29</sup>

The *Competition Act* also provides for a prohibition on knowingly or recklessly making a representation to the public that is false or misleading in a material respect for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest.<sup>30</sup>

Contracts must comply with consumer protection, privacy and intellectual property laws. An entity should also review the terms and conditions of their provincial gambling licence to determine whether there are any mandatory terms and conditions.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

As noted above, the *Competition Act* requires that, where a person promotes a product or business interest by conducting a contest, lottery or game of chance or skill, or mixed chance or skill, the distribution of prizes must be made on the basis of skill or on a random basis in any area to which prizes have been allocated.

General contract law will also apply to the selection of winners.

<sup>29</sup> Competition Act, RSC, 1985 c C-34 s. 74.06; Information Bulletin — Promotional Contests — Section 74.06 of the Competition Act, July 15, 1999 (<https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03126.html>)

<sup>30</sup> Competition Act, RSC, 1985 c C-34 s. 52(1)

An entity should also review the terms and conditions of their provincial gambling licence to determine whether there are any restrictions on the selection of winners or award of prizes.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

The Criminal Code provides for criminal sanctions for every one who, with intent to defraud any person, cheats in a game of chance or mixed chance and skill.<sup>31</sup> Organizers may also enforce contractual provisions set out in the tournament's terms and conditions, including sanctions and bans.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

As noted above, the Criminal Code provides for possible criminal sanctions when a prize is awarded in games where a contestant provides consideration to participate.

An entity should also review the terms and conditions of their provincial gambling licence to determine whether there are any restrictions on the types of prizes that can be awarded.

It is noted that the federal government has recently revised the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) S.C. 2000, c. 17 (the "**AML Act**") to include new provisions relating to virtual currencies. While these new provisions are not scheduled to come into force until June 1, 2021, as currently drafted the regulation triggering definition of "virtual currency" is broad enough to capture in-game currencies commonly used in the video game industry. The Financial Transactions and Reports Analysis Centre

of Canada ("**FINTRAC**"), the agency responsible for administering the AML Act, is expected to provide guidance to the public before these new regulations come into force.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

The *Criminal Code* does not differentiate between land-based and online gambling. As noted above, the *Criminal Code* may apply to entities operating abroad if there is a real and substantial connection to Canada.

As of the date of this publication, no Canadian province has issued a gambling license for the operation of an online gambling service except for those which are owned by the provincial governments themselves<sup>32</sup>.

An entity should also review the terms and conditions of their provincial gambling licence to determine whether there are any restrictions on whether it is permitted to operate both on and offline.



## Other local requirements

**Are there any other key local requirements?**

There is no dedicated regime to the regulation of esports in Canada.

An entity should review the provincial and federal gambling laws to determine whether there are any specific requirements within the province in which it wishes to operate. Finally, Sport Canada has a variety of programs and policies.

However, these programs and policies likely do not apply to esports since esports was not included in the list of organizations funded by Sport Canada.

<sup>31</sup> Criminal Code, RSC 1985 c C-46 s. 209.

<sup>32</sup> For example, Ontario's "PlayOLG Online Casino" or British Columbia's "PlayNow".



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Provincial gambling laws, which were listed above, should be reviewed in the applicable provinces in order to determine any specific timing issues. The time required for a provincial regulator to issue a licence may vary from one province to another, and may also depend on the type of license being issued.

For instance, in BC you must submit your application at least ten weeks prior to the start of your event if gross revenues will exceed CAD20,000, but if the revenues will not exceed CAD20,000, then the application must only be submitted 10 business days prior to the start of the event.

The province of Québec has laws that require the registration of various promotional contests within certain periods of time.



## Translations

### Are the terms of the esports tournament required to be translated by law?

Generally speaking, private organizations operating in Canada have no obligation to serve their customers in any particular language except in the province of Quebec, where Article 5 of the *Charter of the French Language* (the “**French Charter**”) provides that consumers of goods and services (in Quebec) have a right to be informed and served in French.”

Pursuant to the *French Charter*, where a French-language version of a product or service exists, it would have to be made available to Quebec users. An English version may also be made available, so long as the French version has technical characteristics that are at least equivalent to those of the English version. Even if no French version exists, the associated documentation (including instructions, contracts, and policies) and any advertising of the game in Quebec (including a website) would have to be made available in French. Again, an English version may also be offered in addition to the French version.

A violation of the above requirements by any of the distributor, seller, or marketer, would be deemed an offence under the statute and would be subject to a fine of up to CAD20,000. The Office québécois de la langue française, the agency responsible for enforcing the *French Charter*, would also have the option of seeking an additional fine equal to the financial gain realized from any operation within Quebec.



## Penalties for non-compliance

### What are the penalties for non-compliance?

Breach of the lottery and games of chance provisions in the Criminal Code may result in criminal penalties, including imprisonment for a maximum of two years. An entity should review the provincial gambling laws, which were listed above, to determine the applicable penalties in each province since each provincial regulator may impose different sanctions for failing to comply with their laws. For instance, in British Columbia, the Gaming Policy and Enforcement Branch can refuse to issue or renew a licence, suspend or cancel a licence, impose new conditions on a licence, impose an administrative fine of up to CAD5,000 on a licensee.

## Key contacts



### Chris Bennett

#### Partner

DLA Piper (Canada)  
T +1 604 643 6308  
chris.bennett@dlapiper.com



### Dave Spratley

#### Partner

DLA Piper (Canada)  
T +1 604 643 6359  
david.spratley@dlapiper.com



### Ryan J. Black

#### Partner

DLA Piper (Canada)  
T +1 604 643 2929  
ryan.black@dlapiper.com



### Tyson Gratton

#### Associate

DLA Piper (Canada)  
T +1 604 643 6319  
tyson.gratton@dlapiper.com

Chile



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

There are no specific regulations regarding esports or regarding online gambling. However, note that Chilean casinos are expressly forbidden to operate online gambling platforms.

Notwithstanding the foregoing, it is important to note that according to Law No. 19,995 of 2005, it is up to the State to determine the requirements and conditions under which gambling and its related bets may be authorized, their general regulations, as well as the authorization and supervision of the entities authorized to develop them.

## With regard to the applicability of prize promotion regulations to esports activities

There are no specific regulations regarding prize promotions of esports activities. However, there are some requirements set forth in Consumer Protection Law (No. 19,496 of 1997) applicable prize promotions in relation to all contests and raffles that are organized in Chile by a Company with Chilean domicile.

First of all the organizer must inform potential participants/consumers on the amount or quantity of prizes and the period of time in which the winner can request them. Also, the organizer must publish the result of the contest of raffle.

## With regard to the advertisement of esports related activities

There are no specific regulations in this regard. Notwithstanding the above, the Consumer Protection Law establishes that false or misleading advertising directed at consumers will be punishable by a fine of up to 1,500 UTM (approx. USD98,000).

## With regard to the protection of intellectual property rights as part of esports activities

Law No. 17,336 of 1970 on Intellectual Property.

Decree No. 3 of 2006 on Industrial Property.

## With regard to the processing of personal data as part of esports activities

Law No. 19,628 of 1999 on Privacy Protection.



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Chilean legislation is not enforceable against entities operating abroad. Also, the government does not prevent individuals from gambling through international websites.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Chile and there is no dedicated legal or regulatory regime applicable to esports. However, the current Regulation on recognition of a physical activity as a sport modality or specialty includes a procedure for asking for recognition of any sport activity, which is resolved by a technical panel of the Ministry of Sports.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There is no specific certification for the usage of videogames in esports tournaments. However, the Consumer Protection Law requires videogames to be classified by the violence of its content. This information must be included in the packaging of the videogame and shall cover 25% of it.

For videogames classified as not recommended for children under a certain age, companies must verify that children comply with that requirement before selling it.

All the above will be applicable for tournaments carried out in Chile by a Company with Chilean domicile.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

According to the Consumer Protection Law, producers and importers of videogames shall include on the containers, supports or platforms on which they market such products, texts that clearly indicate the level of violence contained in the specific videogame, in order to provide all consumers with the relevant information related to the violence classification of the videogame. However, there are no specific rules applicable to advertising of videogames during esports events.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

There are no regulations in this regard.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Even when there are no particular rules applicable to the participation of minors in esports events, the general capacity to contract under Chilean law (without the need of getting any consent from third parties) is obtained at the age of 18. In case of underage individuals, the capacity to contract is granted to parents or other persons with parental responsibility, which shall act on behalf of the minor (in case of male minors under 14 or female minors under 12 years old) or ratify the minors' act (in case they, being minors, are older than 14 or 12 years old, respectively).



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

Under Chilean legislation, videogames must be classified according to the level of violence of its content. Based on that classification, there are age restrictions for the purchase and selling of videogames.

In relation to the above, it would be advisable to restrict the participation of players by their age, depending on the videogame that will be played in the tournament.



### Contracting esports players

#### Are there particular requirements for t&cs of esports tournaments?

If the tournament is carried out in Chile by a Company with a Chilean Domicile, the T&Cs shall be drafted in accordance with Chilean consumer laws. This regulation requires the Company to duly inform participants about the terms of the tournament and its duration.

Additionally, the mechanics of the esports tournament shall be structured to avoid any form of randomness, since in such case the tournament would be illicit under Chilean legislation. Further, T&Cs shall comply with data protection regulations and intellectual property laws.

Finally, note that according to the Consumer Protection Law, it is forbidden that organizers of public events, including sports events, offer for sale a number of tickets in excess of the capacity of the respective venue.



### Selection of winners

#### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

If winning the tournament depends only on participants' skills and there are no components of randomness, there are no specific requirements beyond general contract regulation and consumer laws.

If the contest will be carried out in Chile by a Company with Chilean domicile, the regulations regarding prize promotions will apply. In such case, the amount or quantity of prizes, the mechanism by which the winner will be awarded, and the winner's identification must be published.



### Sanctions against players

#### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Since match-fixing, corruption and online gambling are not criminalized under Chilean legislation in relation to esports, organizers can only enforce the contractual provisions set out by the T&Cs of the tournament against participants.



### Prizes of esports tournaments

#### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There are no restrictions on the type of prizes, more than those that apply in accordance to general civil law provisions (meaning that no illegal or out-of-commerce goods could be object of any legal contract or relation).



### Online vs. offline esports tournaments

#### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

There are no specific regulations in this regard. However, the organizer must comply with all provisions of the T&Cs of the tournament, no matter the modality of the tournament.



## Other local requirements

### Are there any other key local requirements?

Given that esports are not regulated in Chile as sports, there are no local requirements applicable to them.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

There is no specific timing.



## Translations

### Are the terms of the esports tournament required to be translated by law?

Under consumer regulations, if the tournament will be carried out in Chile and by a Company with a Chilean domicile, the information intended for consumers and users shall at least be communicated in Spanish.



## Penalties for non-compliance

### What are the penalties for non-compliance?

In cases of infringement of the Consumer Protection Law in relation to contests carried out in Chile and organized by a Company domiciled in Chile, fines of up to 2,250 UTM (approximately USD143,000) may apply, depending on the particular breach, amongst others:

- General infringements to Consumer Protection Law, in case no other fine is expressly established: Fine up to 300 UTM (approx. USD15,000)
- Lack or false labels or mandatory mentions in the packaging or advertisement materials: Fine up to 300 UTM (approx. USD15,000)
- False or misleading information regarding products' main characteristics, communicated via mass social media: Fine up to 1,500 UTM (approx. USD95,500)
- Overselling of tickets for events: Fines up to 2,250 UTM (approx. USD143,000)

## Key contact



### Felipe Bahamondez

#### Partner

DLA Piper Chile

T +56 2 2798 2600

fbahamondez@dlapiper.com

China



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

There is not a specific 'single' law regulating esports and related activities. Instead, rules relating to esports and related activities are found across various laws and regulations (both on a national and provincial level). The wide range of relevant laws and regulations set out below forms part of the complex regulatory framework (this is non-exhaustive):

- Interim Provisions on the Administration of E-Sports Events
- Measures for the Administration of Cyber Performance Business Operations
- Notice on Regulating the Operation of Online Games and Strengthening Interim and Ex Post Regulation
- Interim Provisions on the Administration of Internet Culture
- Administrative Measures for Internet Information Services

## With regard to the applicability of gambling laws

Generally speaking, all forms of gambling are illegal in China (except certain form of lotteries, which is not legally considered as a form of gambling). We set out below some regulations that may be relevant in the esports environment:

Opinions of the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Internet Gambling

Notice on Regulating the Operation and Order of Online Games and Prohibiting the Use of Online Games for Gambling Purposes

Regulations on the Administration of Entertainment Venues

## With regard to the applicability of prize promotion regulations to esports activities

- Anti-Unfair Competition Law of the People's Republic of China

- Certain Regulations on Prohibiting Unfair Competition in Prize-offering Sales
- Reply of the State Administration of Industry and Commerce on Issues concerning the Identification of Prize-offering Sales by Lottery Draw and the Interpretation Power of Anti-Unfair Competition Law
- Decision of the Standing Committee of National People's Congress on Strengthening Information Protection on Networks

## With regard to the advertisement of esports related activities

- Advertising Law of the People's Republic of China
- Provisions on the Administration of Online Live-streaming Services
- Circular on Tightening the Administration of Online Live Services

## With regard to the protection of intellectual property rights as part of esports activities

- Trademark Law of the People's Republic of China
- Patent Law of the People's Republic of China
- Copyright Law of the People's Republic of China
- Implementing Regulations of the Copyright Law
- Regulations on Computer Software Protection
- Regulations on the Protection of Rights to Information Network Communication
- Interim Measures for the Voluntary Registration of Works
- Measures for the Registration of Computer Software Copyright
- Measures on Administrative Protection on Internet Copyright
- Implementing Measures for the Copyright Administrative Penalties
- Implementing Regulations of the Trade Mark Law
- Tort Liability Law
- Interim Guidance for Trial of Civil Disputes on Intellectual Property of Online Games (Guangdong Province)

## With regard to the processing of personal data as part of esports activities

- Cyber Security Law of the People's Republic of China
- Guidelines on internet personal information security protection
- Personal Information Security Specification



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

PRC national laws are generally not enforceable against entities operating abroad. That said, there is an exception under the Measures for the Administration of Cyber Performance Business Operations where foreign players involved in broadcasted esports tournaments will require approval from the Ministry of Culture and Tourism. Without such approval, foreign players cannot participate in the broadcasted tournaments.

In practice, regulators do expect foreign entities carrying out any regulated activities within China to comply with any relevant laws and regulations.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Yes. The State Physical Culture Administration has classified esports as Class 99 in the category of sports competition in 2003. In 2008, esports was re-arranged as Class 78. Also, under the National Statistical Classification for Sports Industry (updated in 2015), esports falls under sub-subclass 0330 (other leisure and fitness activities).



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

Yes, there are specific licensing requirements applicable to the provision of games services (including video and game products).

The Interim Provisions on the Administration of Internet Culture also provides that videogames in general should not promote obscenity, gambling, violence or crime, and should not endanger social morality.



### Sponsorship of esports tournaments

#### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

Yes, there are specific regulations applicable to the provision and receiving of sponsorship (including and not limited to filing requirements).

In addition, there are further implications on tax and compliance issues where esports tournament hosts or esports clubs are receiving or providing sponsorships.



### Consumer Protection – advertising

#### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Yes, Although we are not aware of any no specific rules or precedents regulating the advertising of videogames during esports tournaments, the PRC Advertising Law will generally be applicable.



### Participation in esports tournaments

#### Can players pay an admission fee to participate in esports tournaments?

This is usually regulated by the respective game rules of the esports tournament. However, esports tournament hosts and esports clubs should also be mindful of the requirements set out in the relevant anti-unfair competition laws and regulations.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

In 2006, China Sports Association published a Measure for the Administration of National esports Competition (for Trial Implementation). The Measure provides that players must at least attain the age of 18.

However, in esports tournaments held in the recent years (including competitions held by governmental bodies), minors are generally allowed to participate in the tournaments, as long as they have obtained consent from their parents or legitimate guardians.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

The selection of winners and award of prizes for esports tournaments are generally governed by the T&Cs and respective game rules of the esports tournament. In addition, there are specific filing requirements applicable to esports tournaments host.

Where the prize promotions regulatory regime is applicable for a particular tournament, then the selection of winners and award of prizes may be subjected to further requirements.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

This is usually regulated by the respective game rules of the esports tournament. However, esports tournament hosts and esports clubs should also be mindful of the requirements set out in the relevant anti-unfair competition laws and regulations.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers of esports tournament may enforce the relevant contractual provisions (if any) as set out by the T&Cs of the tournament.

Esports tournament hosts should also report any suspicious actions, or illegal practices to the relevant authorities.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

The content of the T&Cs should be drafted in compliance with applicable contract law and other PRC laws such as data protection laws and intellectual property laws.

Organisations should also be aware of the potential compliance issues, filing requirements and tax implications (for example, contracting with underage players, visa issues).



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There are specific filing requirements in respect of the type of prizes awarded in an esports tournament. esports tournament hosts should also be mindful of the requirements set out in the relevant anti-unfair competition laws and regulations.

Where the prize promotions regulatory regime is applicable for a particular tournament, the value of the prizes should not go over RMB50,000 (USD750).



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

Yes, there are specific regulations applicable to online activities as compared to land-based activities.



## Other local requirements

**Are there any other key local requirements?**

The government strives to promote the development of esports. Thus, we anticipate more regulations or guidelines will be published by the regulators in the near future. Organisations are advised to continue monitoring developments in this area.

There are specific filing requirements for the hosting of esports tournaments. Hosts should be mindful that these requirements may vary depending on the location/venue of the tournaments.

Businesses engaged in esports performances and player brokerage should obtain relevant licenses and registrations.

In addition, depending on the types of activities or performances that also take place as part of esports tournaments (e.g. exhibition matches or celebrity performances), the tournaments may constitute 'commercial performances' and would have to meet the requirements set out under the Regulation on the Administration of Commercial Performances, e.g. the tournament hosts would have to register with the State Administration for Industry and Commerce, and the tournament venue would have to be examined and approved by the state and/or local governments' cultural authorities.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

Depending on the nature of the esports tournament, there are specific filing requirements on when to apply for an approval, and authorities approval may take up to 6 months.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

The laws and regulations are not specific or clear on whether the terms and conditions have to be translated into simplified Chinese. However translation of the terms and conditions into simplified Chinese is the preferred approach to avoid misunderstanding between the hosts and participants. Also translation is recommended as if there is any dispute, local courts/arbitral tribunals would require evidence in simplified Chinese and the terms and conditions may be used as evidence.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

Sanctions may vary depending on the non-compliance activity. These range from regulatory warnings and undertakings to fines, orders to suspend operations, loss of business licences, and criminal sanctions in some cases.

## Key contacts



**Scott Thiel**

**Partner**

DLA Piper Hong Kong  
T +852 2103 0519  
scott.thiel@dlapiper.com



**Venus Cheung**

**Registered Foreign Lawyer**

DLA Piper Hong Kong  
T +852 2103 0572  
venus.cheung@dlapiper.com



**Fangfang Song**

**Consultant**

DLA Piper Beijing  
T +86 10 8520 0600  
fangfang.song@dlapiper.com

# Croatia



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Croatian Gambling Act (Official Gazette No. 87/09, 35/13, 158/13, 41/14 and 143/14 – “**Croatian Gambling Act**”)

Esports are not explicitly regulated in Croatia and there is generally no case law, jurisprudence or other literature available concerning this subject matter.

The nature of esports should not be mistaken with the gambling and/or lottery games. According to the Croatian Gambling Act, as the gambling and/or lottery games refer to the games of chance where the gain or loss depends mainly on a coincidence or other uncertain event. It should be noted that betting on the sport games is subject to Croatian gambling regulation.

## With regard to the applicability of prize promotion regulations to esports activities

### With regard to the advertisement of esports related activities

Consumer Protection Act (Official Gazette nos. 41/14, 110/15 and 14/19)

Act on Prohibited Advertising (Official Gazette no. 43/09)

Electronic Communications Act (Official Gazette nos. 73/08, 90/11, 133/12, 80/13, 71/14 and 72/17)

## With regard to the protection of intellectual property rights as part of esports activities

Copyright and Related Rights Act (Official Gazette nos. 167/03, 79/07, 80/11, 125/11, 141/13, 127/14, 62/17 and 96/18)

Patent Act (Official Gazette nos. 16/20)

Trademark Act (Official Gazette no. 14/19)

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

Act implementing the General Data Protection Regulation (Official Gazette no. 42/18)



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

As esports are not explicitly regulated in Croatia, there are no specific rules applying directly to the foreign entities providing esports services. However, the entities incorporated abroad shall comply with general Croatian laws and EU laws in case providing services on Croatian market.

It should be noted that according to article 68 of Croatian Gambling Act foreign entities are in principle prohibited to provide the games of chance in Croatia.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Italy and there is no dedicated legal or regulatory regime applicable to esports.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

Esports are not explicitly regulated in Croatia and accordingly there are no rules regarding certification used as part of esports tournaments.



## Sponsorship of esports tournaments

Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments.

The type of consideration due by the sponsor and the services provided by and to the sponsor can lead to regulatory and tax implications.



## Consumer Protection – advertising

Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

It should be noted that according to article 66 and 67 of Croatian Gambling Act the advertising of games of chance in media aimed for the children and youth are prohibited. According to the article 68 of the same act, the advertising of games of chance which are provided abroad is strictly prohibited.



## Participation in esports tournaments

Can players pay an admission fee to participate in esports tournaments?

As esports are not explicitly regulated in Croatia, there are no specific rules related to participation in the esports tournaments. As long as the price of participation in esports tournaments would be compliant with the applicable consumer laws, we do not see any major issue.



## Selection of participants

Is it possible to place any restriction on the players that can participate in an esports tournament?

As esports are not explicitly regulated in Croatia, there are no specific rules related to selection of

participants in the esports tournaments. General rules of Croatia related to the objective, transparent and non-discriminatory selection criteria will apply.



## Participation of minors in esports tournaments

Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Furthermore, according to the general Croatian family law rules, a person who is 15 years old or older can enter into legal transactions independently, provided that such transactions do not significantly affect a person's personal or property right. Also, the applicable data protection regulation in Croatia provides for certain specific conditions regarding the consent for the processing of data given by a person younger than 16 years. It is thus advisable to acquire parental consent for the participants younger than 16 years.



## Contracting esports players

Are there particular requirements for t&cs of esports tournaments?

As esports are not explicitly regulated in Croatia, there are no specific rules related to contracting esports players and/or T&Cs of esports tournaments. General contract and consumer law rules will apply to this matter.



## Selection of winners

Are there any requirements for the selection of winners and award of prizes for esports tournaments?

As esports are not explicitly regulated in Croatia, there are no specific rules related to election of winners and award of prizes for esports tournaments.

General contract and consumer law rules as well as T&Cs of esports tournaments, if applicable, will apply to the proper selection of winners.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

As esports are not explicitly regulated in Croatia, there are no specific laws related to imposing sanctions against players.

Organizers can only enforce contractual provisions set out by the Ts&Cs of the tournament. However, limitations can apply to actions that can be taken against players without a court order.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

As esports tournaments are not explicitly regulated in Croatia, there are no restrictions on the type of prizes that can be awarded as part of esports tournaments.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

As esports are not explicitly regulated in Croatia, there are no specific rules related to online and land-based esports tournaments.



## Other local requirements

**Are there any other key local requirements?**

As esports are not explicitly regulated in Croatia, there are no specific rules related to any other key legal requirements. However, games of chance, including but not limited to betting on the esports games, are subject to local gambling regulation and therefore as a consequence, are regulated under the Croatian law.

Detailed review of the mechanic of esports tournaments is necessary to avoid any challenges and ensure compliance with the local rules.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

As esports are not explicitly regulated in Croatia, there are no specific rules related to specific timing to ensure compliance.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

According to the Croatian consumer protection rules, the information intended for consumers and users must be made readable in Croatian language and in Latin alphabet. This however, does not exclude the possibility of using other foreign languages if the aforementioned condition is fulfilled.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

As esports are not explicitly regulated in Croatia, there are no specific rules related to penalties for non-compliance. On the contrary, in case of breach of gambling laws, misdemeanor sanctions will apply consisting of pecuniary penalties, seizing the profit and different security measures (e.g. prohibition of undertaking the activity or seizure of the items).

## Key contacts



**Jasna Zwitter-Tehovnik**

**Partner**

DLA Piper Weiss-Tessbach

Rechtsanwälte GmbH

T +43 1 531 78 1042

jasna.zwitter-tehovnik@dlapiper.com



**Ivan S. Maleš**

**Senior Associate**

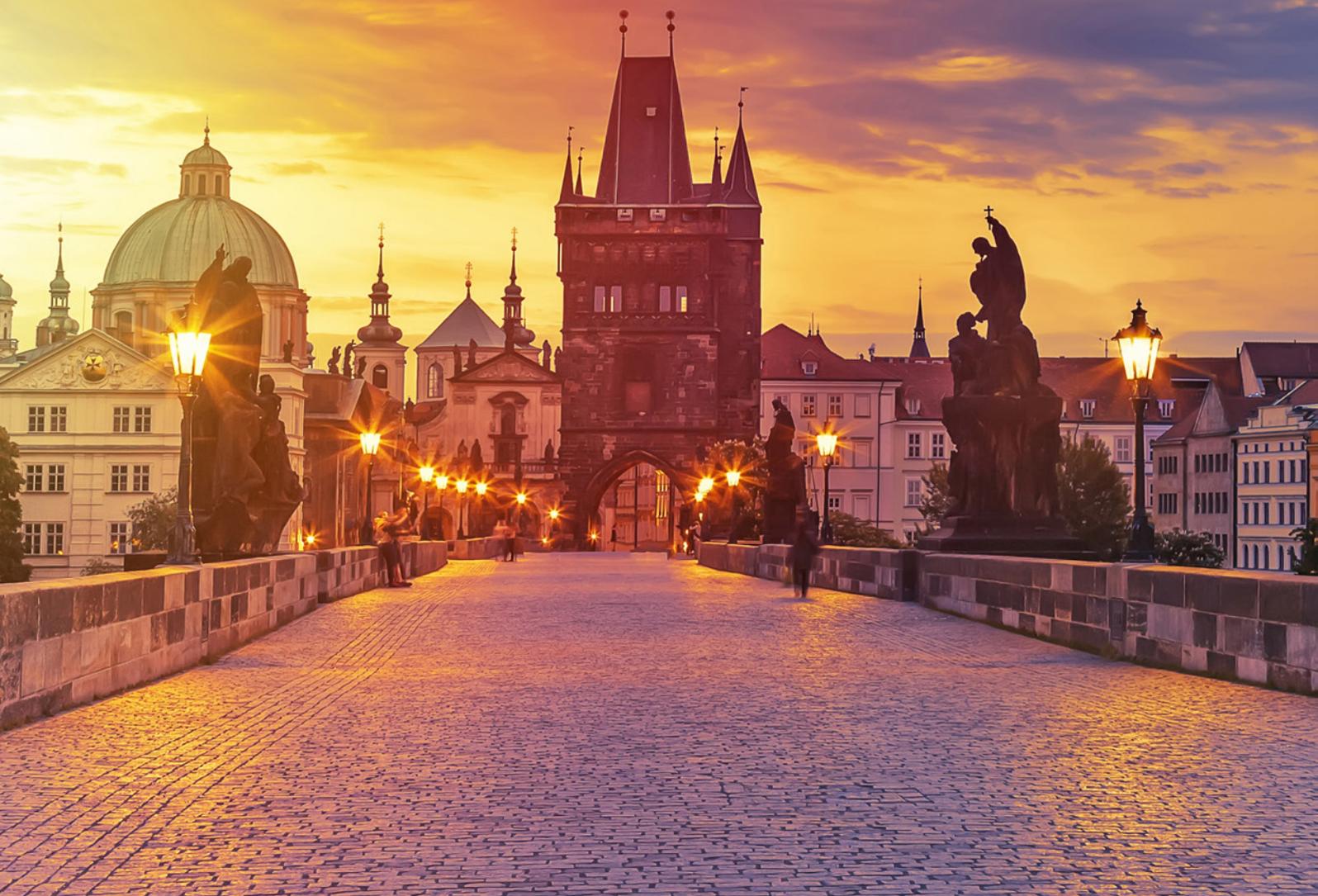
DLA Piper Weiss-Tessbach

Rechtsanwälte GmbH

T +43 1 531 78 1925

ivan.males@dlapiper.com

# Czech Republic



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Act No. 186/2016 Coll., on Gambling (the "Gambling Act"). Gambling is generally defined in Section 3(1) as games of chance, betting or a lottery, in which the participant wagers a bet, while no return on such bet is guaranteed, and, the winning or loss on which is entirely or partly subject to chance or unknown circumstance.

Act No. 187/2016 Coll., on gambling tax.

## With regard to the applicability of prize promotion regulations to esports activities

Act No. 89/2012 Coll., the Civil Code.

Act No. 634/1992 Coll., the Consumer Protection Act.

## With regard to the advertisement of esports related activities

Act No. 40/1995 Coll., on Advertising Regulation, specified in Section 5j.

Act No. 634/1992 Coll., the Consumer Protection Act.

## With regard to the protection of intellectual property rights as part of esports activities

Act No. 121/2000 Coll., the Copyright Act.

Act No. 207/2000 Coll., on the Protection of Industrial Designs.

Act No. 441/2003 Coll., on Trademarks.

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

Act No. 110/2019 Coll., on Processing of Personal Data.



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Czech regulators do not enforce rules against entities operating abroad, unless such entities focus on Czech players and/or consumers in their activities or otherwise conduct their activities in the territory of the Czech Republic.

In such cases, entities operating abroad shall comply with Czech law even if they are also open to players and/or consumers of other jurisdictions. In order to assess whether an activity is focused at Czech individuals, various circumstances should be considered (e.g. language of communication, website domain, advertising etc.).

The applicability of Czech law can lead to significant obligations under these rules, including tax liabilities.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Firstly, there is no specific regulation applicable to esports in the Czech Republic which would provide a definition. The only legal definition of sport is included in Act No. 230/2016 Coll. which defines a sport as: *"any form of physical activity which, through organized and unorganized participation, aims at the harmonious development of physical and mental fitness, development of social relationships, improving health and achieving sports performances recreationally or in competitions at all levels, individually or together."* It appears that esports are generally unlikely to fulfill all elements of this legal definition.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification for the usage of video games in esports tournaments.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are not any specific requirements applicable to sponsorship agreements for esports tournaments, other than those provided by Section 5j of Act No. 40/1995 on Advertising Regulation that regulates advertising related to betting activities, gambling and other types of games with cash winnings.

Also, the type of consideration due by the sponsor and the services provided by and to the sponsor can lead to regulatory and tax issues.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

General consumer protection regulations apply when advertising video games, most prominently Act No. 634/1992 Coll., the Consumer Protection Act and specific regulation provided by Section 5j of Act No. 40/1995 on Advertising Regulation that regulates advertising related to betting activities, gambling and other types of games with cash winnings.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

If a requirement to pay a price for participation is to be considered, it is necessary to avoid a situation where the prize promotion could be interpreted as a game of chance. Operation of games of chance is regulated by Czech law and is not allowed without a permit.

The general distinction is that in order to be interpreted as a game of chance (and therefore subject to gambling regulation), the player must provide a stake the return of which is not guaranteed and the result of the game must be determined based on chance or other unknown circumstance. In other words, it is not considered as gambling when the game either (i) does not require the player to provide any stake or (ii) a stake is provided, but the result of the game is not in any way dependent on chance (e.g. if the game is 100% skill-based).

This means that if an element of chance is present in the selection of the winner, the participants must not provide any stakes (payment) the return of which would not be guaranteed.

Therefore, players can only be asked to pay a price to participate in esports tournaments if the above conditions are fulfilled (e.g. if the price presents a non-refundable registration fee; or the player makes a wager on their own skill in a game which is 100% skill based).



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Minors may enter into contracts which are, as to their nature, appropriate to the intellectual and volitional maturity of the minors of his age. It is therefore generally not excluded for minors to participate in esports tournaments.

However, if a participation fee would be present, the scenario displayed in the answer to question 7 would apply. Therefore, if the esports tournament would be interpreted as a game of chance, minors would not be allowed to participate as persons under 18 are forbidden from participating in a game of chance.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

Criteria for selection of participants need to be objective, transparent, and non-discriminatory.



### Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

No, but the T&Cs must be generally drafted in accordance with Czech consumer protection laws – the T&Cs have to be transparent for participants before they enter the esports tournament, which means that among other things, information must be provided about how winners will be selected and notified and what prizes will be awarded and when.

Additionally, the mechanics of the esports tournament shall be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations and intellectual property laws.



### Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

No, there are no particular requirements.



### Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers can only enforce contractual provisions set out by the T&Cs of the tournament.



### Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

There are no particular restrictions on prizes awarded; however, it must be legal to distribute the prize to the person who wins (e.g. no alcohol/weapons/tobacco products to minors).



### Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

There are no specific differing regulations concerning online and land-based esports tournaments.



### Other local requirements

**Are there any other key local requirements?**

No. Under Czech law, there is no regulation of esports tournaments per se. It is however necessary to avoid a situation where an esports tournament could fall within other areas of regulation, such as e.g. gambling regulation.

In this respect, we stress out that players should not be allowed to bet on match results because in such cases, the players do not actively participate in the esports but instead, they wager on the outcome of other people's game (which is similar to betting on results of any other type of sport). Consequently, such activity would clearly fall within gambling regulation.

As a consequence, a deeper review of the mechanics of esports tournaments is necessary to avoid challenges.



### Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

No.



## Translations

### Are the terms of the esports tournament required to be translated by law?

Yes. The T&Cs and other documents relating to the esports tournament must be translated into Czech whenever the esports tournament is directed at consumers.



## Penalties for non-compliance

### What are the penalties for non-compliance?

Esports tournaments are in general supervised by the Czech Trade Inspection. Misleading the consumers in connection with esports tournaments may lead to fines of up to 5 million CZK (approx. USD220,000).

There is also a possibility that the personal data processing aspects of the esports tournament could breach the GDPR, which imposes fines of up to 20 million EUR (approx. USD22.4m) or 4% of the entity's worldwide annual revenue.

If the esports tournament fulfilled the criteria of gambling as explained above, the entity operating such an esports tournament without a permit could be fined with an administrative penalty of up to 50 million CZK (approx. USD2.2 million) if the entity is a company and up to 500,000 CZK (approx. USD22,000) if the entity is a private individual. Operation of gambling without a license may also trigger criminal liability.

## Key contacts



### Petr Šabatka

#### Partner

DLA Piper Prague LLP

T +420 222 817 670

petr.sabatka@dlapiper.com



### Jan Karabeleš

#### Associate

DLA Piper Prague LLP

T +420 222 817 815

jan.karabeles@dlapiper.com

# Denmark



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the advertisement of esports related activities

The Danish Marketing Practices Act (marketing targeting children, use of business identifiers, unfair commercial practices, misleading advertising, etc.)

Rules issued by the International esports Federation (IESF Competition Regulations)

Rules issued by the Danish esports Federation

Rules and instructions issued by the Danish Consumer Ombudsman (camouflaged advertising, internet marketing, marketing targeting children, social media marketing)

General legal principles regarding the right of publicity (use of athletes' own image)

## With regard to the protection of intellectual property rights as part of esports activities

The Danish Copyright Act

The Danish Trademark Act (logos etc.)

General legal principles (transmission/streaming)

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

The Danish Data Protection Act (Act No. 502 of 23 May 2018)

## Other

Anti-Doping rules (the World Anti-Doping Code and the Six International Standards, the Danish National Anti-Doping Rules, the International esports Federation Anti-Doping Rules)

Danish Tax laws (prize money, sponsorships, sport pension schemes, tax depreciation og computer equipment, sign-on-fees, etc.)

DGI esports' Guide to Associations on esports

Pan European Game Information's Age Rating System (PEGI)

The Danish Gambling Act (prohibition of advertisements targeted at children and young people under 18 years)

Danish Online Gambling Association's Code of Conduct for the Gaming Industry, March 2019 (socially responsible marketing, including sponsorship of sporting events)



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

In some cases, national laws will be enforceable against entities operating abroad – e.g. the Danish Data Protection Act is applicable to entities operating abroad if they process personal data of data subjects located in Denmark and the processing activities are related to offering good or services to such data subjects.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

The Danish tax authorities seem to have recognised esports as a sport.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

No specific certification is required for the usage of video games in esports tournaments. However, since videogames are protected by copyright, it is assumed that the organizers of esports tournaments must enter into a license agreement with relevant rightsholder.

Furthermore, the PEGI's age markings based on the games sound and image effects ensures that, for example, movies, videos, DVDs and computer games are labeled in relation to which age group the content is addressed at. The PEGI age marking is only indicative. However, the PEGI age marking is an important factor for associations to consider when choosing games.



### Sponsorship of esports tournaments

**Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?**

No specific requirements applicable to sponsorship agreements for esports tournaments currently exists. However, the Danish esports Federation's Code of Ethics strongly advises against direct or indirect marketing related to betting activities, gambling and energy drinks when such marketing is aimed at children under the age of 18 years old.

Generally, sponsorship agreements are governed by Danish contract law.

Moreover, the Danish tax rules apply in connection with sponsorships within esports. The requirements for reporting sponsorships to the tax authorities depend on the agreement with the sponsor.



### Consumer Protection – advertising

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

N/A



### Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

If every participant (player) is required to pay the exact same amount, i.e. non-discriminatory pricing, there should be no restriction regarding price.



### Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

The capacity to contract and therefore to participate in an esports tournament under Danish law is obtained at the age of 18. In case of individuals younger than that age, the capacity to contract for minors is granted to parents or other persons with parental responsibility.



### Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

Criteria of selection of participants need to be objective, transparent and non-discriminatory.



### Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

T&Cs must be drafted in accordance with Danish consumer and marketing laws, if the tournament is not directed at professional players.



### Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

General contract and consumer laws will apply to the proper selection of winners.

If a tournament takes place during the IESF's Esports World Championships, the rulebooks issued by the IESF govern such tournament.



## Sanctions against players

Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can only enforce contractual provisions set out in the T&Cs of the tournament.

According to DGI's rules for match-fixing, it is, among other things, forbidden to knowingly influence the result of a match, to bribe referees or opponents or to receive/give gifts in order to influence the competition. Other forms of unethical behavior are also prohibited. If DGI's rules are violated in connection with esports activities under the auspices of DGI, competitions or tournaments, it may result in sanctions and the exclusion of players, teams and associations.



## Prizes of esports tournaments

Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

As long as the object (prize) is not considered illegal under Danish law, no specific restriction exists.



## Online vs. offline esports tournaments

Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

N/A



## Other local requirements

Are there any other key local requirements?

N/A



## Timing

Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

No



## Translations

Are the terms of the esports tournament required to be translated by law?

If the esports tournament has made use of marketing in Danish, a translation of the terms into Danish is mandatory.



## Penalties for non-compliance

What are the penalties for non-compliance?

It depends on what type of non-compliance, e.g. non-compliance with the Danish marketing laws may result in administrative fines.

The penalties for non-compliance are set out in each specific national legislation or set of rules issued by the trade associations.

## Key contact



**Marlene Winther Plas**

**Partner**

DLA Piper Denmark Law Firm P/S

T +45 33 34 00 47

marlene.plas@dk.dlapiper.com

# Egypt



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Article 739 of the Law no. 131 of 1948 of the Egyptian Civil Code (the "Civil Code") states that any agreement related to gambling or betting is void. Furthermore, the Egyptian Penal Code provides for criminal sanctions on any person that avails a location for gambling games. Such sanctions include imprisonment of not more than three years and a fine not exceeding one thousand pounds.

## With regard to the applicability of prize promotion regulations to esports activities

Approval of the Egyptian Federation for Electronic Games ("EFEG"). Such approval shall include the terms and conditions of the esports tournament, the prizes, the entry fee and any other requirements set out by the organizer.

Law no. 71 of 2017 promulgating the Egyptian Sports Law ("Sports Law").

Law no. 181 of 2018 promulgating the Consumer Protection Law ("Consumer Protection Law").

In the event that an Egyptian entity promotes a prize through a competition/tournament, the approval of the Ministry of Solidarity shall be required. Such approval shall be obtained by submitting an application stating the date of the competition/tournament, the prize, the total amount of the prize, place of competition/tournament, check with 15% of the total amount of the prize issued by a duly licensed bank in Egypt, letter of guarantee with the total amount of the prize issued by a duly licensed bank in Egypt and invoice of the prize.

## With regard to the advertisement of esports related activities

Sports Law.

Consumer Protection Law.

## With regard to the protection of intellectual property rights as part of esports activities

The Intellectual Property Rights law no. 82 of 2002.

## With regard to the processing of personal data as part of esports activities

Cybercrimes Law no. 175 of 2018.

Telecommunication Law No. 10 of 2003.



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

The general concept is that Egyptian laws has no extraterritorial jurisdiction, accordingly the Egyptian laws shall apply to Egyptian entities and foreign entities operating in the Arab Republic of Egypt. However, certain provisions of the Egyptian laws related to contracts, criminal sanctions and family related matters have extraterritorial enforceability.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Egypt. However, the Egyptian Federation for Electronic Games has been established by virtue of the Ministry of Youth's Decree no.855 of 2003, as the body responsible for oversight of the esports. No specific regulations or written guidelines have been issued until date to regulate the authority or powers of Egyptian Federation for Electronic Games over esports.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

No specific regulations are in place requiring videogames to have certain certification to be used in esports tournaments. However, the approval of EFEG is required to use videogames as part of esports tournaments. Such approval shall include the details of the videogames along with other requirements.

It should be noted that the videogames by itself as a product may be subject to the applicable regulations regarding their content and intellectual property rights.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments per se. According to the Sports Law, there are no restrictions in relation to the sponsorship agreements relation to sports tournaments including the esports.

However, it should be noted that the sponsorship agreements must not violate the public order or public morale in Egypt or any mandatory rule of the Egyptian legislations.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

According to the Consumer Protection Law, it is prohibited to promote or import product (which is in our case videogames) may discriminates between citizens, offend them or violates the public order or public morale.

The Consumer Protection Law requires any advertiser of a product to comply with the provisions of the Egyptian standards related to the product being promoted.

The Consumer Protection Law grants the Consumer Protection Authority the power to suspend any advertisement that are not compliant with the laws or public order and morals.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

No specific regulations govern the payment of any subscription fees to participate in esports tournaments. The subscription fees or price may be determined by the organizer and shall be included in the application to be submitted to the EFEG to obtain their approval on the tournament.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

There are no restrictions and/or exception to the participation of minors in esports tournaments. This shall be subject to the terms and conditions set out by the organizers for the participators in the tournament. Such terms and conditions shall be submitted to the EFEG along with the application to obtain their approval for the tournament.

It should be noted that the Egyptian law provides for several protections to the minors in doing busines or conducting commercial dealings without the consent of the adult entrusted with supervision of the minor.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

No specific regulations are in place regulating this matter. It is possible to place restrictions to the player that can participate in an esports tournament as maybe determined by the organizer, provided it does not violate the public order or moral. Such restrictions shall be included to the terms and conditions to be submitted to the EFEG.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

There are no particular requirements for T&Cs of esports tournaments. As previously mentioned, the T&Cs of esports tournaments shall be submitted to the EFEG along with the application for their review and approval. In all events, T&Cs are in compliance with the provisions of Civil Law and Cybercrime Law.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There is no restriction on the type of prizes that can be awarded as part of esports tournaments. As mentioned above, if the prizes are products of the organizer, then the attendance and approval of the Ministry of Solidarity is required, in addition to that the prizes do not violate the public order and public morale in Egypt.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

There is no specific requirement for the selection of winners and award of prizes for esports tournaments. However, in the event that the prize is a product of the organizer, then the attendance and approval of the Ministry of Solidarity is required. Additionally, in the event that the winner is a minor and the terms and conditions of the tournament requires an identity card, then the parent of the minor must attend in this regard.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

There are no different regulations applicable online and land-based esports tournaments.



## Other local requirements

### Are there any other key local requirements?

As mentioned above esports are not currently recognized in Egypt as sports, and therefore there are no dedicated regime applicable to esports.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can only enforce contractual provisions set out by the Ts&Cs of the tournament. However, limitations can apply to actions that can be taken against players without a court order.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

The date and time of the tournament must be stated in the application submitted to the EFEG. However, in the event that the date and time changes due to any reason, then the organizer must notify the EFEG with such changes, along with the Ministry of Solidarity (in the event that the prizes are products of the organizer).

It should be noted that due to the current partial lockdown measures implemented by the Egyptian government, public gatherings are prohibited and limitation on operating hours of several establishments are in place.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

It is preferable to translate the terms of the tournament into Arabic.



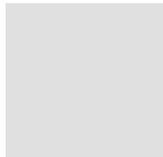
## Penalties for non-compliance

**What are the penalties for non-compliance?**

There are no specific penalties for non-compliance, however, the penalty under the Sports law is imprisonment for a period of not more than six months and a fine of not more than EGP100,000 in the event of commencing an activity related to sports field without an authorised authority, through an unlicensed entity, suspended or dissolved company.

Additionally, in the event that the organizer advertises' for a product which is not compliance with the Consumer Protection law's requirements and it has been informed by the Consumer Protection Agency to modify the advertisement within three (3) days and such modification has not been done, then the advertiser shall be subject to a fine of not less than EGP50,000 and not more than EGP1,000,000 or twice the value agreed for advertising the product, whichever is greater.

## Key contact



**Ehab Taha**

**Managing Partner**

+2 02 386 536 14

ehab.taha@tmslegal.com

# Finland



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Lotteries Act (1047/2001, as amended)

Criminal Code of Finland (39/1889, as amended)

## With regard to the applicability of prize promotion regulations to esports activities

Lotteries Act (1047/2001, as amended)

The Consumer Protection Act (38/1978, as amended)

The Act on Electronic Communication Services (917/2014, as amended)

## With regard to the advertisement of esports related activities

Consumer Protection Act (38/1978, as amended)

Unfair Business Practices Act (1061/1978, as amended)

## With regard to the protection of intellectual property rights as part of esports activities

Copyright Act (404/1961, as amended)

Trademarks Act (7/1964, as amended)

Registered Designs Act (221/1971, as amended)

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

Data Protection Act (1050/2018, as amended)



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Finnish regulation applies to esports events addressed to Finnish players and/or consumers.

There is no case law on the matter.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Finland and there is no dedicated legal or regulatory regime applicable to esports.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification for the usage of video games in esports tournaments, apart from the certifications necessary for their sale to the public, such as the Act on Audiovisual Programmes (710/2011, as amended) and its provisions on age rating for video games.

A certification might be recommendable to avoid potential disputes, even if not expressly required



## Sponsorship of esports tournaments

Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorships agreements for esports tournaments.



## Consumer Protection – advertising

Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Marketing has to be in accordance with Finnish consumer laws so that consumers can tell the difference between advertisements and other content that esports tournaments produce such as live streams.



## Participation in esports tournaments

Can players pay an admission fee to participate in esports tournaments?

There are no specific rules concerning participation prices in esports tournaments.



## Participation of minors in esports tournaments

Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Under Guardianship Services Act (442/1999, as amended) minors can enter into contracts which, in view of the circumstances, are usual and of little significance. Minor's participation to an esports tournament shall be evaluated on the basis of whether the participation is usual and has little significance.

As an example, minors may have a right to participate in a small tournament held in the minor's home city but if minor has to travel for a long distance, for example to a foreign country, the participation is most likely invalid.



## Selection of participants

Is it possible to place any restriction on the players that can participate in an esports tournament?

Criteria of selection of participants need to be objective, transparent, and non-discriminatory.

If Italian prize promotion regulations apply, under some circumstances the esports tournament shall be limited to participants located in Italy.



## Contracting esports players

Are there particular requirements for t&cs of esports tournaments?

Stringent requirements apply to the content of the T&Cs and the formalities to be followed if an esports tournament is subject to prize promotion regulations.

Additionally, T&Cs shall be drafted in accordance with Finnish consumer laws, if the tournament is not directed at professional players, and misleading advertising rules, if the tournament is addressed to professional players.

Additionally, the mechanics of the esports tournament shall be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations and intellectual property laws.



## Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

The selection of winners is not regulated as such.

In addition, general contract and consumer law rules will apply to the proper selection of winners.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers can only enforce contractual provisions set out by the T&Cs of the tournament. However, limitations can apply to actions that can be taken against players without a court order.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

There is no specific regulation for esports tournaments.

However, Finnish prize promotion regulations might be applicable.

If these provisions apply, certain prizes are considered improper such as guns, explosives, dangerous chemicals and living animals.

Furthermore, the prize amount and the chances of winning the prize are important factors. Very high value prizes and very high probabilities for winning prizes may be regarded contrary to ordinarily accepted business practices. However, high value prizes as such are not

considered improper. The prize itself must also actually exist. It is strictly prohibited to market through prize promotions where in fact no prize is available.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

There are no different regulations applicable to online esports tournaments compared to land-based esports tournaments.



## Other local requirements

**Are there any other key local requirements?**

Operators holding a Finnish general online gambling and betting license as well as those holding a betting shop license can offer bets on esports events, within limits set out by gambling regulations and subject to the approval of the type of esports event and the type of bet by the Finnish gambling regulator.

There is no dedicated regime applicable to esports.

The Finnish Esports Federation (SEUL) has published the Finnish esports Code of Conduct (only available in Finnish) that includes ethical guidelines for both players and organizers of esports tournaments.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

No, although time should be allowed to deal with data protection issues (e.g. ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).



## Translations

[Are the terms of the esports tournament required to be translated by law?](#)

Translation is not required by law.



## Penalties for non-compliance

[What are the penalties for non-compliance?](#)

In cases of breach of gambling laws, criminal sanctions can apply.

There is also a possibility that the personal data processing aspects of esports tournaments could breach data protection laws.

## Key contact



**Markus Oksanen**

**Partner**

DLA Piper Finland

T +358 9 4176 0431

markus.oksanen@dlapiper.com

France



# Governing law

As a general comment, please note that French law provides a general principle pursuant to which are considered as lotteries, and prohibited as such, all operations (including skill competitions) (i) offered to the public, under any denomination, (ii) determined, even partly, by chance, (iii) creating an expectation of a gain and (iv) for which payment from the participant is required by the organizer. Any operations, online or not, which meet the above criteria are prohibited.

However, French law provides some exemptions to this prohibition, including exemptions related to online gambling and games of chance and online videogames, i.e. esports tournaments.

In addition, esports tournaments may also be subject to prize promotion regulations, if they are considered as such promotions.

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Article 1964 et seq. of the French Civil Code.

Article L. 320-1 et seq. of the French Code of Internal Security.

Law No. 2010-476 dated 12 May 2010 related to the opening to competition and to regulation of online gambling and games of chance ("*Loi n° 2010-476 du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne*").

Law dated 2 June 1891 aiming at regulating authorization and operation of horse races ("*Loi du 2 juin 1891 ayant pour objet de réglementer l'autorisation et le fonctionnement des courses de chevaux*").

Decree No. 78-1067 dated 9 November 1978 related to organization and exploitation of lotteries authorized by article 136 of law dated 31 May 1933 and by article 48 of law No. 94-1163 dated 29 December 1994 ("*Décret n°78-1067 du 9 novembre 1978 relatif à l'organisation et à l'exploitation des jeux de loterie autorisés par l'article 136 de la loi du 31 mai 1933 et de l'article 48 de la loi n° 94-1163 du 29 décembre 1994*").

Law No. 2017-257 dated 28 February 2017 related to the status of Paris and to urban planning ("*Loi n° 2017-257 du 28 février 2017 relative au statut de Paris et à l'aménagement métropolitain*") and decree No. 2017-913 dated 9 May 2017.

## With regard to the applicability of prize promotion regulations to esports activities

Article L. 321-8 et seq. of the French Code of Internal Security (with the relevant regulatory provisions, e.g. article R. 321-40 et seq. of French Code of Internal Security).

Article L. 121-20 of the French Consumer Code.

## With regard to the advertisement of esports related activities

Article L. 121-1 et seq. of the French Consumer Code (unfair/misleading/aggressive commercial practices).

Recommendations of French advertising self-regulatory organization (ARPP) and the International Chamber of Commerce (ICC) Code on Gambling

Decree No. 92-280 dated 27 March 1992 regarding broadcast advertising ("*Décret n°92-280 du 27 mars 1992 pris pour l'application des articles 27 et 33 de la loi n° 86-1067 du 30 septembre 1986 et fixant les principes généraux définissant les obligations des éditeurs de services en matière de publicité, de parrainage et de télé-achat*").

Law No. 2016-1321 of October 7, 2016 for a digital Republic ("*Loi n°2016-1321 du 7 octobre 2016 pour une République numérique*").

Decree No. 2017-871 of 9 May 2017 relating to the organisation of video game competitions ("*Décret n° 2017-871 du 9 mai 2017 relatif à l'organisation des compétitions de jeux vidéo*").

Article L. 7124-1 et seq. of the French Labour Code.

## With regard to the protection of intellectual property rights as part of esports activities

French Intellectual Property Code.

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 of April 27, 2016 on the protection of natural persons with regard to the processing of personal data (GDPR) (together with the relevant implementation laws).

Law No. 78-17 of January 6, 1978 on 'Information Technology, Data Files and Civil Liberties' (data protection act), as amended.

Article L. 34-5 of the French Post and Electronic Communications Code regarding electronic direct marketing.

Recommendations of the French data protection authority (CNIL) and of the EDPB and WP29.



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Entities operating abroad must comply with French law in case of esports events addressed to French players and/or consumers, even if they are also open to players and/or consumers of other jurisdictions.

In order to determine whether the promotion targets French consumers, the regulator may take into consideration factors such as the eligibility criteria, advertising in local media, language, etc.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in France. There are no provisions relating to esports in the French Sport Code. Its legal regime is essentially governed by the French Code of Internal Security and the Labour Code.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

Provisions of Article L. 321-8 et seq of the French Code of Internal Security related to videogame competitions refer to Article 220 terdecies of the French General Tax Code for the definition of videogames. Thus, a videogame is defined as any leisure software made available to the public in a physical medium or online and including elements of artistic and technological creation, offering to one or several users interactions relying on a written frame or simulated situations and resulting in moving images, with or without sounds. However, it should be noted that contrary to the French lawmaker, French and European case law favor another definition, that of a complex work, on the basis of distributive classification.

As to videogame competitions, there are defined as competitions that bring together, based on a videogame, at least two players or teams of players for a score or a victory.

Organization of such videogame competitions does not include organization of bets.

Consequently, there is no dedicated certification for the usage of videogames in competitions, including esports tournaments, apart from the certifications necessary for their sale to the public.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments.

However, the type of consideration due by the sponsor and the services provided by and to the sponsor can lead to regulatory (e.g. prohibition of advertising of tobacco, alcohol, investment services related to some financial contracts, medicine) and tax issues.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

The French Consumer Code as well as applicable guidelines from the ARPP (the French advertising self-regulation body) provide that ads must comply with certain general rules (according to which ads must not be misleading, must not be contrary to public decency, to the rights of others, must not exploit vulnerable people such as minors, etc.).

In addition, ads (taken in a broad sense including sponsored contents of any kind) must be clearly identified as such. If the advertising nature of the message is not clear from the contents of context, the ad must be labelled/presented as an ad. The advertiser must also be clearly identified.

Note that though only applicable to TV advertising (this includes Video on demand (VOD) and advertising in cinemas), French law provides for certain audio-visual contents to be rated (those deemed inappropriate for children under 18, under 16, under 12 or under 10), and that such rated contents be broadcasted only at certain times. The French Audiovisual Council (CSA) determines such categories of contents and the applicable broadcasting regime (in terms of broadcasting times and type of channels). Therefore, this will depend on whether the esports tournament is broadcasted on TV or only through the internet.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Distinction is to be made between (i) physical esports tournaments and (ii) online esports tournaments.

#### 1. Physical esports tournaments

Esports tournaments, which physically gather in one place all participants, are allowed under French law, provided that the total amount of the registration fee or of the financial contribution due by the participant does not exceed 100% of the total organization cost of the event, including the total amount of the gains or prizes offered. When the total amount of the gains or

prizes offered exceeds EUR10,000, the organizers must justify the existence of an instrument or mechanism that guarantees that the gains and prizes are entirely redistributed. In addition, such competitions must be notified to the competent authority.

#### 2. Online esports tournaments

Online esports tournaments may in no event include a financial contribution. However, Article L. 321-11 of the French Code of Internal Security provides that for online esports competitions, the cost of internet access and the potential cost of the purchase of the game used as a basis for the esports competition may not be considered as a financial contribution.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Article L. 321-10 of the French Code of Internal Security provides that the participation of a minor in video game competitions may be allowed under conditions defined by decree. In this respect, in order for a minor to participate in esports tournaments, the minor's legal representative must have previously authorized such participation in writing. The organizer must keep a copy of such authorization (which may be in a dematerialized form) for one year, as well as the number, the nature and the authority which issued the legal representative's and the minor's identity documents.

The minor's legal representative must also be informed of the financial stakes of the competition and the games used in the competition. This information includes, in particular, reference to the signage provided for in article 32 of law No. 98-468 of 17 June 1998 on the prevention and punishment of sexual offences and the protection of minors.

Under article L. 7124-9 of the French Labour Code, part of the remuneration of any kind received for the practice of competitive video game play by a minor under 16 years of age who is subject to compulsory schooling may be left at the disposal of his or her legal representatives. The remaining part shall be paid to and administered by the French *Caisse des dépôts et consignations* until the child reaches the age of majority, with withdrawals being authorized only in emergencies and on an exceptional basis.

Please note that participations of minors under 12 in esports tournaments with monetary awards are prohibited.



## Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

Selection criteria of participants must be objective, transparent, and non-discriminatory.

Specific restrictions apply to players who are minors. See question 8 above.



## Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

T&Cs entered into between esports tournaments' organizers and consumers/non-professionals must be drafted in accordance with French consumer law, including but not limited to regulations prohibiting unfair and misleading commercial practices.

Note that Law No. 2016-1321 of October 7, 2016 for a digital Republic ("Loi n°2016-1321 du 7 octobre 2016 pour une République numérique") also introduced a special status for salaried professional players of competitive video games, supplemented by Decree No. 2017-871 of 9 May 2017 relating to the organisation of video game competitions ("Décret n° 2017-871 du 9 mai 2017 relatif à l'organisation des compétitions de jeux vidéo").

If an esports tournament may be considered as a prize promotion, the related regulation must apply in addition.

The T&Cs of esports tournaments must also comply with data protection regulations and intellectual property laws.



## Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

The conditions for the awarding of the prizes must be clear, objective and clearly defined.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers may only enforce contractual provisions set out by the T&Cs of the esports tournament, provided that the compensation set forth in the T&Cs in case of breach of its contractual obligations by the consumer is not manifestly imbalanced.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

The following cannot be awarded as prizes:

- Weapons (Article 5 of law No. 85-706 dated 12 July 1985).
- Tobacco-related products (Article L. 3512-4 of French Public Health Code).
- Living animals, except farm animals in agriculture-related tournaments (Article L. 914-4 of the French Rural and Sea Fishing Code).
- Anything contrary to public order or anything the distribution of which is prohibited or regulated (e.g. drugs).

The trademark owner may object to its products being offered as prizes.

Article R. 321-45 of the French Code of Internal Security sets forth that the esports tournaments' organizers must deposit monetary rewards received by a minor under 16 at the French *Caisse des Dépôts et Consignations* on behalf of the minor.



## Online vs. offline esports tournaments

[Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?](#)

Distinction is to be made between (i) physical esports tournaments and (ii) online esports tournaments.

### (i) Physical esports tournaments

Esports tournaments, which physically gather in one place all participants, are allowed under French law, provided that the total amount of the registration fee or of the financial contribution due by the participant does not exceed 100% of the total organization cost of the event, including the total amount of the gains or prizes offered. When the total amount of the gains or prizes offered exceeds EUR10,000, the organizers must justify the existence of an instrument or mechanism that guarantees that the gains and prizes are entirely redistributed. In addition, such competitions must be notified to the service of the Ministry of the Interior in charge of games and races.

### (ii) Online esports tournaments

Online esports tournaments may in no event include a financial contribution. However, Article L. 321-11 of the French Code of Internal Security provides that for online esports competitions, the cost of internet access and the potential cost of the purchase of the game used as a basis for the esports competition may not be considered as a financial contribution.



## Other local requirements

[Are there any other key local requirements?](#)

- Specific requirements related to bookmaking

Section L. 321-8 of the French Code of Internal Security provides that the organization of esports tournaments does not include the organization of bookmaking.

Consequently, in no event may the organizer of the e-sport competition organize a betting system parallel to the competition itself.

- Specific requirements related to hiring professional esports players

Under French law No. 2016-1321 dated 7 October 2016, specific requirements must be met to hire professional esports players. Any company or association must obtain a ministerial approval to hire such professional esports players. The employment agreement entered into between the company/association and the esports player must be a fixed term agreement, the term of which may not be less than a competitive videogame season (i.e. one year) and must not exceed five years. In addition, said employment agreement must comply with requirements set forth in Article 102 of the law dated 7 October 2016.

Article L. 7124-1 4° of the French Labour Code also makes the hiring of a minor by a company, with the purpose of having him or her participate in video game competitions, subject to a prior individual authorization granted by the French administrative authority.

Dates of seasons of videogames competitions are defined in an order dated 17 April 2018.



## Timing

[Is there the need to comply with specific timing to ensure compliance \(other than reviewing the terms and conditions\)?](#)

Time should also be allowed if the organizer has not yet made the appropriate steps towards becoming compliant with the GDPR and French data protection act requirements as regards the management of the personal data collected and processed in connection with esports tournaments, including, without limitation, the creation and maintenance of a record of data processing activities, appropriate information notices provided to data subjects, and formal processes implemented in order to enable the latter to exercise their rights (i.e. access, rectification and erasure, data portability, objection, restriction of processing, the right to digital legacy).

Where the processing of personal data in the context of esports tournament is likely to result in high risks to the rights and freedoms of natural persons (e.g. where such data is used to profile participants), the organizer must also proceed with a Personal Data Impact Assessment.

In France, since the entry into force of the GDPR on May 25, 2018, the general principle is that each processing purpose for which personal data is processed must be evidenced with a record of data processing activities. Therefore, it is not a requirement to make a record entry for each esports tournament, but to have one record entry encompassing the management of the personal data collected and processed in the course of such operations (provided that means of processing and data processed are similar). If personal data is transferred outside of the European Economic Area, it is necessary to ensure that the recipient is located in a country recognized by the European Commission as ensuring an adequate level of personal data protection, or that a proper transfer mechanism is implemented e.g. binding corporate rules, European Commission model clauses subject to compliance with the latest requirements placed by the European Court of Justice. See in particular ECJ, *Data Protection Commissioner v. Facebook Ireland and Maximilian Schrems*, C 311-18, July 16, 2020.

In addition, the organizer should allow time to implement 'Privacy by Design' and 'Privacy by Default' principles to any further processing of personal data in the context of esports tournament (i.e. ensure that appropriate technical and organizational measures are implemented to meet the requirements of the GDPR and that, by default, only the personal data that is necessary for the purposes of esports tournament is collected and processed).

## Translations

**Are the terms of the esports tournament required to be translated by law?**

Yes, into French (Toubon law dated 4 August 1994).

## Penalties for non-compliance

**What are the penalties for non-compliance?**

Not complying with the provisions of the French Code of Internal Security may be punished by the following sanctions:

- Up to 3 years' imprisonment and a fine up to EUR90,000 for individuals and EUR450,000 for legal entities (or up to 7 years' imprisonment and a fine of up to EUR200,000 for individuals and EUR1,000,000 for legal entities, if committed in an organized group);

- Confiscation of the gaming or lottery machine, if applicable;
- Additional sanctions for individuals:
  - loss of civil rights (eg right to vote and/or be elected to a public office);
  - confiscation of the means used to commit the offense;
  - publication of the decision;
  - permanent closure or closure for up to 5 years of the establishment(s) used to commit the offense; and
  - prohibition from exercising certain activities.
- Additional sanctions for legal entities:
  - dissolution;
  - permanent closure or closure for up to 5 years;
  - confiscation of the means used to commit the offence;
  - publication of the decision; and
  - prohibition for up to 5 years from obtaining or maintaining the license required to operate online gambling activities.
- A fine up to EUR100,000 for individual ticket sellers, or for those individuals advertising the lottery and up to EUR500,000 for legal entities such as companies. The court may increase the fine to four times the amount spent to advertise the lottery.

In addition, organizers may be punished (per offense) by a fine up to EUR1,500 in the event of:

- a minor under 12 participates in an esports tournament with a monetary award;
- the organizer of an esports tournament is not able to prove written authorization from the legal representative of the minor who participated in the tournament.

Addition sanctions may apply in case of:

- breach of gambling and games of chance regulations;
- misleading, aggressive or unfair commercial practices; and
- breach of data protection rules.

## Key contact



**Gregory Tulquois**

**Partner**

DLA Piper France LLP

T +33 (0) 1 40 15 24 28

gregory.tulquois@dlapiper.com

# Germany



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

State Treaty on Gambling (*Glücksspielstaatsvertrag = GlüStV*) as well as corresponding (implementing) laws on gambling in each of the 16 German states regulating gambling that needs a licence.

Sec. 33c to 33i of the German Trade Law (*Gewerbeordnung = GewO*) regulating inter alia gaming equipment and other games with the possibility to win as well as gambling halls.

Sec. 284 to 287 of the German Criminal Code (*Strafgesetzbuch = StGB*) providing criminal sanctions for unlicensed gambling activities.

Sec. 762 to 763 of the German Civil Code (*Bürgerliches Gesetzbuch = BGB*) providing that gambling and bets regularly do not establish a legal obligation.

## With regard to the applicability of prize promotion regulations to esports activities

Sec. 657 to 661a of the German Civil Code (*Bürgerliches Gesetzbuch = BGB*) providing for the legal obligations in connection with prize promotions.

German Law against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb = UWG*) prohibiting unfair including misleading commercial acts.

German Telemedia Law (*Telemediengesetz = TMG*) providing for information requirements for online prize promotions.

## With regard to the advertisement of esports related activities

German Law against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb = UWG*) prohibiting unfair including misleading commercial acts (which includes advertising).

State Treaty on Broadcasting and Telemedia (*Rundfunkstaatsvertrag = RStV*) regulating inter alia advertising on TV and on the Internet.

State Treaty on Gambling (*Glücksspielstaatsvertrag = GlüStV*) as well as corresponding (implementing) laws on gambling in each of the 16 German states and Advertising Guideline (*Werberichtlinie*) regulating advertising for gambling that needs a licence.

## With regard to the protection of intellectual property rights as part of esports activities

German Copyright Law (*Urheberrechtsgesetz = UrhG*).

German Trademark Law (*Markengesetz = MarkenG*).

## With regard to the processing of personal data as part of esports activities

General Data Protection Regulation (Regulation (EU) 2016/679 = *GDPR*).

German Federal Data Protection Law (*Bundesdatenschutzgesetz = BDSG*).

## Other regulations

State Treaty on the Protection of Minors in the Media (*Jugendmedienschutz-Staatsvertrag = JMStV*) and German Youth Protection Law (*Jugendschutzgesetz = JuSchG*) regulating youth protection requirements.

German Residence Law (*Aufenthaltsgesetz = AufenthG*) and German Employment Regulation (*Beschäftigungsverordnung = BeschV*) regulating visa requirements.



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Even when operating abroad, entities shall comply with German law in case esports events are held in Germany or online esports events target the German market, e.g. by addressing German players and/or consumers, even if they are also open to players and/or consumers of other countries. Indicators for targeting the German market are: the usage of claims in German, the reference to Germany in the T&Cs, the use of German language and using the German flag.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments. There are, however, requirements for sponsoring in broadcasting and (in certain cases) on the Internet in the State Treaty on Broadcasting and Telemedia (*Rundfunkstaatsvertrag* = RStV) that might be relevant if esports events are broadcasted on TV or streamed on the Internet.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not recognized as a sport in Germany and special exemptions for regular sports are generally not applicable. There is also no specific esports regulation in Germany.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Yes, the general advertising, sponsoring, youth protection and unfair competition requirements also apply to the advertising of videogames during esports tournaments. This includes that the advertising must not be misleading, it must not physically or mentally impair children or adolescents and it must not harm the interests of children or adolescents or exploit their inexperience.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There is no direct certification requirement for the use of videogames in esports tournaments in Germany. However, the German youth protection laws provide for age-rating requirements that are mostly relevant if minors (persons under the age of 18) participate – as players or as visitors/viewers – at the tournament.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Generally yes, the organizer of an esports tournament may require players to pay any price to participate. However, restrictions apply if the participation fee is charged from minors (persons under the age of 18).

In addition, payments need to be structured in a way that they do not constitute a stake in order to avoid gambling or comparable licensing requirements.

Act (*Jugendarbeitsschutzgesetz = ArbSchG*). In this case, there are time restrictions for minor players, including weekends.



### Participation of minors in esports tournaments

#### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

There is no specific regulation of the participation of minors in esports tournaments in Germany, but the general youth protection laws need to be observed if minors (persons under the age of 18) participate at an esports tournament – as players or as viewers of the event.

In most cases, the deciding factor will be the age rating of the video games that are played or even just shown at the event. The German Entertainment Software Self-Regulation Body (*Unterhaltungssoftware Selbstkontrolle = USK*) is the responsible body in Germany for the age rating of video games. Although it is disputed in the German legal literature whether and how the USK's age ratings apply to the organization of esports tournaments, it is generally advisable to observe the age ratings. This is because the German authorities could prohibit the presence of minors at a public event in accordance with the German Youth Protection Law (*Jugendschutzgesetz = JuSchG*) if the event is harmful to minors – and the age rating of the video game would at least be an indicator for that.

Moreover, in the event that it is necessary to conclude a contract or similar agreement in order to participate in the esports tournament it must be taken into account, that the capacity to contract under German law is obtained at the age of 18. In case of individuals younger than that age, the parents have to agree in principle. Depending on the specific circumstances, engaging a minor player might also be seen as an employment that might need a special work permit according the German Youth Work Protection



### Selection of participants

#### Is it possible to place any restriction on the players that can participate in an esports tournament?

In general, the organizer can make use of its (virtual) domiciliary right (*Hausrecht*) as long as the criteria of selection of participants are objective, transparent and non-discriminatory.

However, there are regulations that specify the selection of players if the event is considered as gambling or if the venue is a gambling hall: Minors and persons in the risk of gambling addiction are not allowed to participate in gambling or to be present in gambling halls.



### Contracting esports players

#### Are there particular requirements for t&cs of esports tournaments?

There are no particular requirements for T&Cs of esports tournaments. Generally speaking, T&Cs shall be drafted in accordance with German consumer laws and other laws that are mentioned in the answer to question 1.

The provisions of Sections 305 et seq. of the German Civil Code (*Bürgerliches Gesetzbuch = BGB*) require that T&Cs have to be transparent and made accessible for participants before they enter the tournament. T&Cs should provide information about the rules of the tournament and how winners will be selected. Above all T&Cs shall not lead to unreasonable discrimination of the participants.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

There are no specific requirements for the selection of winners and award of prizes for esports tournaments, but it is strongly recommended to set out requirements for the selection of winners and the awarding of prizes and restrictions (e.g. the rules of the game) in a T&Cs document, especially if the players are non-professionals and therefore to be treated as consumers.

Apart from that, general contract and consumer law rules will apply to the proper selection of winners.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can enforce contractual provisions set out by the T&Cs of the tournament or by the individual contract between the organizer and a player. For example, the organizer could terminate the contract with a player in accordance with Sec. 314 of the German Civil Code. Additionally, organizers might be able to substantiate sanctions on the basis of their domiciliary right – under certain circumstances they even have a “virtual” domiciliary right.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There are no particular restrictions on the type of prizes that can be awarded as part of esports tournaments. However, there are restrictions on prizes that can be awarded to minors (e.g. no alcohol, tobacco or gambling products). In addition, general (especially criminal) prohibitions apply (e.g. no weapons or illegal drugs as prizes).



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

There are different regulations applicable for online and land-based esports tournaments.

Land-based esports events that are held in Germany need to comply with additional local building, street, convention and trade laws. Depending on the kind and the size of the event, specific notifications or even permits might be necessary, e.g.

- a security concept might need to be discussed with security authorities for large land-based events,
- a special use permit might be necessary for events on public streets,
- serving alcoholic beverages at the event might need a catering permit.



## Other local requirements

### Are there any other key local requirements?

There are no laws that directly regulate esports in Germany. As a consequence, a more in-depth review of the organization of an esports tournament is necessary to avoid legal conflicts. The laws that are listed in the answer to question 1 are the general laws which – depending on the respective circumstances – may have a relation to esports.

Gambling laws need to be avoided in order to avoid gambling licensing requirements. The State Treaty on Gambling (*Glücksspielstaatsvertrag = GlüStV*) defines gambling or a game of chance as a game where the player is required to pay a stake in order to receive a chance of winning, and the outcome is determined entirely or predominantly by chance. Bets on the occurrence or outcome of a future event, such as sports bets or including bets on virtual events, are considered to be games of chance if they are placed in exchange

for a stake – in this case the element of chance is irrelevant. If one of the elements is missing, the service is generally not gambling and therefore does not need a gambling licence.

A broadcasting licence in accordance with the State Treaty on Broadcasting and Telemedia (*Rundfunkstaatsvertrag = RStV*) might be necessary if esports tournaments are broadcasted live and on a scheduled basis.

Players from outside the EU/EEA might need a visa or residence permit depending on the duration of their stay. The Federal Foreign Office (*Auswärtiges Amt*) recognizes esports tournaments as events ‘with a sporting character’. A recent legislative change to the German Employment Regulation (*Beschäftigungsverordnung = BeschV*) provides easier entry for professional esports players to Germany since March 2020.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

Necessary notifications or application for permits need to be filed as soon as possible with the competent German authorities in order to ensure regulatory compliance.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

Under German consumer regulations, terms and conditions must be provided in a German translation in order to be clear and unambiguous for German participants.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

Basically all regulatory requirements may be penalized in Germany in the case of non-compliance, especially regarding youth protection, gambling licensing and other local laws dealing with public safety and order. Usual penalties range from administrative fines to criminal fines and even imprisonment. In addition, German authorities may enforce regulatory requirements by issuing orders or prohibition orders that may lead to additional penalty payments in the case of non-compliance.

## Key contacts

### INTELLECTUAL PROPERTY AND TECHNOLOGY



**Dr. Kai Tumbrägel**

**Partner**

DLA Piper Germany  
T +49 221 277 277 241  
kai.tumbraegel@dlapiper.com



**Gabriele Engels**

**Counsel**

DLA Piper Germany  
T +49 221 277 277 245  
gabriele.engels@dlapiper.com

### LITIGATION & REGULATORY



**Dr. Michael Stulz-Herrnstadt**

**Partner**

DLA Piper Germany  
T +49 40 188 88 223  
michael.stulz-herrnstadt@dlapiper.com



**Christoph Engelmann**

**Counsel**

DLA Piper Germany  
T +49 40 188 88 223  
christoph.engelmann@dlapiper.com

# Greece



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

The main legislative act that governs gambling in Greece is Law 4002/2011, as recently amended by Law 4635/2019. There are also several Regulation regime, consisting mainly of Decisions issued by the Hellenic Gaming Commission (hereinafter referred to as the "HGC").

## With regard to the applicability of prize promotion regulations to esports activities

Law 4002/2011, as amended.

Decision No 163/4F/09.07.2015 ("Commercial Communication") of the HGC, as amended.

## With regard to the advertisement of esports related activities

Article 35 of L. 4002/2011, as amended.

Decision No 163/4F/09.07.2015 ("Commercial Communication") of the HGC, as amended.

## With regard to the protection of intellectual property rights as part of esports activities

Law 4970/2020 provides for IP, copyright and connected rights.

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

Law 4624/2019



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

According to art. 46 par. 1 of Law 4002/2012, in order to offer legally services and games of chance online, the companies must be lawfully established in European Union or European Economic Area Member States and hold a respective lawful licence for the operation and provision of such services.

In case of breach of the said provisions of Greek law, there are administrative, as well as severe criminal sanctions.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Although not yet officially published, there is a draft regulation of the HGC regarding the "Enactment of the Gaming Regulations and the Gaming Technical Specification Regulations for the organisation and running of online games of chance". According to this draft Technical Regulation, some forms of esports fall within the scope of "Type A" Licence ("betting licence").



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

In principle, videogames as part of esports tournaments fall under the scope of the "Type A" Licence (i.e. online betting, as opposed to "Type B" Licence, which covers online casino and poker games). Attention is drawn to the fact that the Greek Law permits betting only on events which are not recorded, whether fantasy or not, which might raise issues as regards specific types of esports tournaments.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

The provisions of Article 35 of Law 4002/2011 and of the Decision No 163/4Γ/09.07.2015 ("Commercial Communication") of the HGC are also applicable to sponsorship agreements for esports tournaments.

In a nutshell the applicable rules forbid any form of direct and/or indirect commercial communication regarding entities providing credits to players in order for them to participate in games of chance.

Furthermore, the HGC poses several restrictions, mainly through its Decisions, regarding promotional activities. To name a few: promotional activities shall not a) encourage consumers' natural propensity to gamble; b) stimulate their active participation in it; c) hold out the prospect of major winnings, etc.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Yes, there are several restrictions imposed, which are laid down in detail in Decision No 163/4Γ/09.07.2015 of the HGC, as amended. Most of them aim at protecting players and minors, as well as preventing gambling addiction.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Pursuant to Art. 32 of Law 4002/2011, as amended, there are relevant restrictions which apply to land-based gaming through gaming machines. Specifically, the minimum amount for participation in games of chance through gaming machines is ten cents (EUR0.10) and the maximum is two euros (EUR2). These amounts may be adjusted by decision of the HGC. Nevertheless, there are no such restrictions in online gaming.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

The age standard applied in Greece is higher than in most other countries. Significantly, online gaming, as well as access in places where gambling is conducted, is not allowed to minors and persons under 21 years old. Nevertheless, there is an exception for "OPAP's" agencies (i.e. the sole provider for land-based games recognized by the Greek State), where the age limit is lower (gambling is allowed to persons over 18 years of age).



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

Minors, persons aged 18-21 (only in online gaming) and self-excluded persons (e.g. persons subject to guardianship) are banned from participating in any gaming stores. There is no other specific provision applicable in esports.



### Contracting esports players

#### Are there particular requirements for t&cs of esports tournaments?

There are no particular requirements for T&Cs of esports tournaments other than the general provisions of gambling law. In any case the T&Cs of esports tournaments must comply with data protection regulations and intellectual property laws.



### Selection of winners

#### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

The payment of a participation price for an online game of chance must be explicitly made to a legitimate holder of a licence, without any third-party mediation, except for credit institutions or payment institutions legally established and operating in Greece, or legally established and operating in any other EU Member State or State of the European Economic Area.

Furthermore, in cases where the outcome is derived with the use of a Random Number Generator, there are specific technical requirements laid down by HGC's Decisions in order to ensure randomness.



### Sanctions against players

#### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Such sanctions can only be imposed by the official authorities, namely the HGC and, depending on the nature of the offence, by the Hellenic Police and the Public Prosecutor.



### Prizes of esports tournaments

#### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

According to Art. 31 par. 5 of Law 4002/2011, profits deriving from games of chance played online (including esports tournaments) shall be deposited in an account kept by the player at a credit institution or payment institution, established and lawfully operating in Greece or in any other member – state of the EU of European Economic Area.



### Online vs. offline esports tournaments

#### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

Online esports tournaments are regulated by the specific provisions of Law 4002/2011 and the specific Regulations of the HGC, whereas land-based esports tournaments are governed by other Decisions and Regulations of the HGC. Therefore, there are significant differences between these two regulatory regimes.



### Other local requirements

#### Are there any other key local requirements?

There is a series of requirements posed by several Technical Regulations, especially as regards online gaming. Greece is currently under a transitional period as regards online gaming, since there are four Technical Regulations pending, which contain several important provisions.

Furthermore, there are also many regulatory provisions regarding responsible gaming, as well as AML compliance, GDPR compliance etc.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Specific time frames to ensure compliance are provided in AML regulations (e.g. biannual reports to be submitted before the HGC).



## Translations

### Are the terms of the esports tournament required to be translated by law?

According to HGC's guidelines, the information intended for consumers and users shall be shown in Greek. This also applies to the obligatory messages that appear where gambling is conducted, such as telephone helplines for gambling addiction problems etc.



## Penalties for non-compliance

### What are the penalties for non-compliance?

The HGC takes all measures necessary to effectively regulate the gaming market. In serious breaches, criminal and administrative sanctions are the most likely methods of enforcement, due to their direct and onerous character.

As far as **criminal sanctions** are concerned, the penalties provided for by the law vary, depending on the way in which the game is conducted:

If the games are conducted via gaming machines, the penalty is imprisonment for a term of at least three years and a monetary fine of between EUR100,000 and EUR200,000 per gaming machine.

If the games are conducted online, the penalty is imprisonment for a term of at least three years and a monetary fine of between EUR200,000 and EUR500,000.

If the game provided is a game of chance, the penalty is imprisonment for a term of at least ten years and a monetary fine of EUR700,000, regardless of the means of conduct of the games.

Whoever provides games without holding the required licence to this effect, if the games are not finally conducted, shall be punishable with imprisonment for a term of at least one year and with a monetary fine of between EUR70,000 and EUR150,000.

It is very important to note that Article 52 par. 2d of Law 4002/2011 treats the illegal online provision of games of chance (i.e., non-recreational/skill games) as a felony offence, in which case potential infringers may be sentenced to imprisonment ranging from a minimum of ten years to a maximum of 15 years.

The **administrative penalties** pursuant to Art. 51 of Law 4022/2011 provide that, in a violation of any provisions of the Law or of the specific Regulations a fine of EUR1,000 to EUR2,000 or a percentage of GGR can be imposed, per violation or per game machine, depending on the severity and frequency of the offence. Moreover, the licence can be recalled for up to three months, or even permanently.

The HGC may at its discretion provide instructions, guidelines and recommendations for the infringers to comply with the law, before imposing any administrative penalty, non-compliance with which constitutes an aggravating factor when imposing the administrative penalty.

## Key contact



**John Kyriakides**

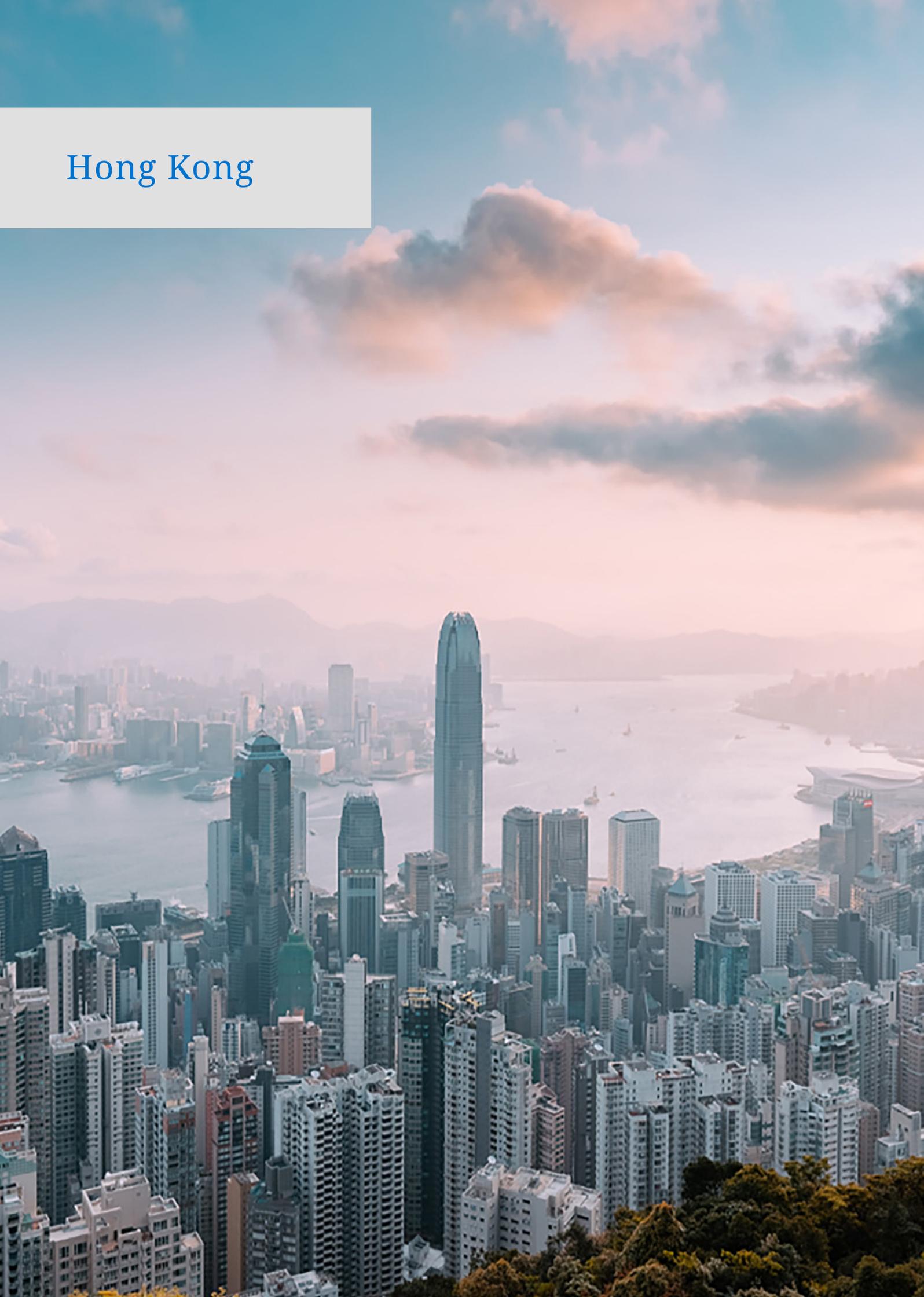
**Managing Partner**

KG Law Firm

T +30 210 817 1511

j.kyriakides@kglaw.gr

# Hong Kong



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

There is not a specific 'single' law regulating esports and related activities. That said, the laws and regulations set out below are relevant:

## With regard to the applicability of gambling laws

The Gambling Ordinance (Cap. 148) provides that gambling and lotteries in Hong Kong are generally illegal except for certain licensed or exempted activities. 'Games of chance', or 'games of chance and skill combined' are governed by the Ordinance.

The Gambling Regulations (Cap. 148A) provides the licensing requirements of different types of gambling activities.

## With regard to the applicability of prize promotion regulations to esports activities

The Gambling Ordinance (Cap. 148) and the Gambling Regulations (Cap. 148A) regulate prize promotions in which there is at least one element of chance. Approvals are required from competent authorities and a licence is required for prize promotion activities.

Guidance Notes on Application for the Grant of Amusement Game Centre Licence.

Guidance Notes on Application for the Grant of Amusements with Prizes Licence.

Places of Public Entertainment Ordinance (Cap. 172).

Application Guide for Lottery Licence regulating competitions (for money or property which involve guessing or estimating the results of future events).

Application Guide for Trade Promotion Competition Licence

This guide provides information relating to competitions for money conducted for the purpose of promoting a trade or product sale by way of a game that distributes prizes by lot or chance.

## With regard to the advertisement of esports related activities

Trade Descriptions Ordinance (Cap. 362).

Generic Code of Practice on Television Advertising Standards.

Radio Code of Practice on Advertising Standards.

Code of Practice of the Association of Accredited Advertising Agents of Hong Kong.

## With regard to the protection of intellectual property rights as part of esports activities

Trade Marks Rules (Cap. 559A).

Trade Descriptions Ordinance (Cap. 362).

## With regard to the processing of personal data as part of esports activities

Personal Data (Privacy) Ordinance (Cap. 486).



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

In general, Hong Kong legislations do not confer extra-territorial application. That said, there may be some restrictions applicable to overseas entities conducting certain activities in Hong Kong.

For example, any person who wishes to conduct a trade promotion with prizes in Hong Kong which falls within the ambit of "lottery" and/or "gaming" as defined under the Gambling Ordinance (Cap. 148) is required to obtain a licence. If an overseas applicant does not have presence in Hong Kong, it should appoint and authorise an agent whose business is registered in Hong Kong to be the applicant for the license.



## Recognition of esports as a sport

**Is there any regulation according to which esports can fall under the legal category of sports?**

Esports are not formally recognized as a sport in Hong Kong and there is no dedicated legal or regulatory regime applicable to esports.



## Technical requirements of esports tournaments

**Do videogames need any certification to be used as part of esports tournaments?**

We are not aware of any dedicated certification required for the usage of online video games in esports tournaments.

As an aside, any publication of articles relating to electronic games, computer games, video games are regulated by the Control of Obscene and Indecent Articles Ordinance (Cap. 390).



## Sponsorship of esports tournaments

**Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?**

We are not aware of any specific laws or regulations imposing restrictions on sponsorship agreements relating to esports tournament. This will be regulated by the respective game rules of the esports tournament.

That said, other regulations may apply if the sponsorship is for contribution to the prize pool, and constitute crowd-funding.



## Consumer Protection – advertising

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

We are not aware of any specific laws or regulations imposing requirements on advertising of videogames during esports tournament. This said, the general principles which govern all advertising will be applicable.

In particular, any advertisement directed to children should not contain anything which may physically, mentally or morally harm the children or exploit their credulity, such as violence, act of anguish, or act disregarding safety.



## Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

We are not aware of any specific laws or regulations imposing restrictions on players paying any price to participate in an esports tournament. This will be regulated by the respective game rules of the esports tournament.



## Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

A minor is a person under the age of 18 years in Hong Kong. To the extent that the minor will need to enter into a contract with a manager or any esports associations or clubs, it should be reminded that minor does not have legal capacity to enter into contract.

- Where a minor enters into a contract for esports tournaments under guarantees, the principle of “qualified unenforceability” would operate to protect the minors, and the guarantor (e.g. parents) shall be liable for any obligations under the contract.



## Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

We are not aware of any specific laws or regulations imposing restrictions on the selection of players in an esports tournament. This will be regulated by the respective game rules of the esports tournament.

That said, organisations should be aware of potential employment issues (e.g. contracting with underage players, visa issues) and tax implications.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

The contents of the T&Cs should be drafted in compliance with applicable contract law and other Hong Kong laws on relevant areas such as data protection and intellectual property.

Organisations should also be aware of potential employment issues (e.g. contracting with underage players, visa issues) and tax implications.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

We are not aware of any specific statutory requirements under Hong Kong law prescribing the type of prizes that may be awarded in an esports tournament.

That said, if the prize promotions regulatory regime is applicable for a particular tournament, then there may be restrictions on the type of prizes that can be awarded (e.g. cash prizes are not permitted).



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

The selection of winners and award of prizes for esports tournaments are generally governed by the T&Cs and respective game rules of the esports tournament.

That said, if the prize promotions regulatory regime is applicable for a particular tournament, then the selection of winners and award of prizes may be subjected to the relevant requirements (e.g. each participant must have an equal chance of winning).



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

The Gaming Ordinance (Cap.148) is applicable to all types of gambling activities, regardless of whether it is conducted offline or online.



## Other local requirements

### Are there any other key local requirements?

While there is no dedicated regime for esports in Hong Kong at the moment, the Government strives to promote the development of esports. Thus, we anticipate that more regulations or guidelines will be published by regulators in the near future. Organisations are advised to continue monitoring developments in this area.

Depending on the actual operation of esports venues, the operating organisation may obtain an exemption from the Licensing Authority for some of the licensing requirements under the Amusement Game Centres Ordinance (Cap. 435).

Where there is any data collecting or processing activities, it should be conducted in accordance with the Personal Data (Privacy) Ordinance (Cap. 486).



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers of esports tournament may enforce the relevant contractual provisions (if any) as set out by the T&Cs of the tournament.

Notwithstanding the above, any player who wins a gamble or a lottery by false practice may also face prosecution for such criminal offence under the Gambling Ordinance (Cap. 148).



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Where a Trade Promotion Competition Licence is required, the completed application forms, together with the supporting documents and publicity materials, should be submitted to the Licensing Authority at least two calendar weeks before the commencement of the promotion.

Where an Amusements With Prizes Licence is required, the completed application forms, together with the supporting documents, should be submitted to the Licensing Authority at least three calendar weeks (for short-term licenses) or four weeks (for annual licenses) before the commencement of the promotion.



## Translations

### Are the terms of the esports tournament required to be translated by law?

There are no specific or clear regulations on whether the T&Cs are required to be translated into official languages. However, providing bilingual versions of T&Cs (in Traditional Chinese and English) is common practice adopted by organisations in Hong Kong.



## Penalties for non-compliance

### What are the penalties for non-compliance?

Non-compliance with a condition of a licence governed by the Gambling Ordinance can result in a fine of HKD50,000 (approximately USD6,375) and imprisonment for 2 years, and will be taken into consideration on any future application for a license.

Any person who promotes, organises, conducts or manages, or otherwise has control of, an unlawful lottery, may be liable for a fine of HKD5,000,000

(approx. USD637,500) and 2 years imprisonment on summary conviction, or a fine of HKD5,000,000 (approx. USD637,500) and 7 years imprisonment on indictment.

Any person who sells, disposes of, or possesses illegal lottery tickets with a view to its sale or disposal, may be liable for a fine HKD50,000 (approx. USD6,375) and imprisonment for 2 years.

Upon the occurrence of a breach of the data protection principles under the Personal Data (Privacy) Ordinance (Cap. 486), the Office of the Privacy Commissioner for Personal Data of Hong Kong may issue an enforcement notice to direct the data user to remedy the contravention. Failure to comply with the enforcement notice is an offence and offenders may be liable for a maximum fine of HKD50,000 (approx. USD6,375) and imprisonment of 2 years.

Applying a false trade description to goods or services can lead to a fine of HKD100,000 (approx. USD12,740) and imprisonment for up to 2 years on summary conviction, or a fine of HKD500,000 (approx. USD63,750) and imprisonment for up to 5 years on indictment.

## Key contact



### Scott Thiel

#### Partner

DLA Piper Hong Kong  
T +852 2103 0519  
scott.thiel@dlapiper.com



### Wilson Lung

#### Associate

DLA Piper Hong Kong  
T +852 2103 0432  
wilson.lung@dlapiper.com



### Venus Cheung

#### Registered Foreign Lawyer

DLA Piper Hong Kong  
T +852 2103 0572  
venus.cheung@dlapiper.com

# Hungary



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

- Act 34 of 1991 on Gambling Operations ('Gambling Act')
- Decree No. 32/2005 (X. 21.) PM of the Minister of Finance on the Implementation of Regulations Concerning the Authorization, Organization and Control of Gambling Activities
- Government Decree No. 329/2015 (XI.10.) on the detailed rules of diligent gambling operations
- Government Decree No. 183/2017. (VII. 5.) on the Gambling Supervisory Authority

## With regard to the applicability of prize promotion regulations to esports activities

- Act 34 of 1991 on Gambling Operations ('Gambling Act')
- Hungarian Code of Ethics for E-Sports (issued by Hungarian ESports Federation ["HUNESZ"])

## With regard to the advertisement of esports related activities:

- Act 48 of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities
- Act 185 of 2010 on Media Services and on the Mass Media
- Act 104 of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content
- Act 108 of 2001 on Electronic Commerce and on Information Society Services
- Hungarian Code of Ethics for Esports (issued by HUNESZ)
- Contest Rules of the HUNESZ

## With regard to the protection of intellectual property rights as part of esports activities

- Act 5 of 2013 on the Civil Code
- Act 76 of 1999 on Copyright
- Act 33 of 1995 on the Patent Protection of Inventions
- Act 11 of 1997 on the Protection of Trademarks and Geographical Indications

## With regard to the processing of personal data as part of esports activities

- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data
- Act 112 of 2011 on the Right of Informational Self-Determination and on Freedom of Information



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

In general, carrying out pure esports activities for a prize are not considered as gambling activities in Hungary (as opposed to esports betting). Accordingly, the territorial scope of the Gambling Act and the jurisdiction of Hungarian gambling authorities are not relevant in this respect.

However, in respect of consumer protection matters, Hungarian laws may be enforceable against an entity operating abroad, provided that such entity directs its activities to Hungary (on the basis of indicative factors like language, currency, telephone number, domain, references to Hungarian laws etc.).

**Note:** Providing gambling services without a Hungarian gambling license is illegal and may lead to administrative and even criminal offense proceedings. Prize promotions in general do not constitute gambling under Hungarian gambling regulations. However, caution is needed if the characteristics of gambling come into play (especially if payment is required to participate in the prize promotion and if winning the prize depends on chance).



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

eSports are not formally recognized as sports in Hungary and there is no dedicated legal or regulatory regime applicable to eSports. However, some argue that, in accordance with the definition of "sport" as provided in Act 1 of 2004 on sports, e-sport may fall under the definition of sporting activity. This interpretation, however, is not confirmed in practice.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification for the usage of videogames in esports tournaments. In Hungary there is no specific legal regulation in respect of classification and labeling of videogames.

A certification might be recommendable though to avoid potential disputes, even if not expressly required.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to esports tournaments?

There are no specific esports related regulations in respect of sponsorship agreements, accordingly general advertisement rules apply.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

There is no such regulation in Hungary, general advertisement rules apply.



## Participation in esports tournaments

### Can players pay any price to participate in esports tournaments?

Yes, this is possible.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Participants under the age of 18 need parental consent to enter the tournaments organized by HUNESZ. Pursuant to Hungarian law persons who have not yet reached the age of 18 shall be deemed minors. There are 2 types of minors: (1) minors with limited capacity (between 14 and 18) and (2) legally incompetent minors (under 14). In case of (1) parental consent is required, save for certain situations (e.g. dispose of earnings acquired through work). As for (2) legal statements of incompetent minors shall be null and void (except for small and common transactions in everyday life).



## Selection of participants

### Is it possible to place any restriction to the players that can participate in an esports tournament?

Criteria of selection of participants need to be objective, transparent and non-discriminatory.

Participants under the age of 18 need parental consent to enter the tournaments organized by HUNESZ. On these events only those players can actually enter the field who meet the age requirements, are a member of the HUNESZ database through an esports organization or are registered under an amateur athlete contract, and are featured in the roster of their team.



## Contracting esports players

### Are there particular requirements for T&Cs of esports tournaments?

There are no particular requirements for T&Cs of esports tournaments, accordingly the general rules of the Hungarian Civil Code may apply. Hungarian consumer protection laws may also apply, if the tournament is not directed to professional players.

Additionally, the mechanic of the esports tournaments shall be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations and intellectual property laws.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

There are no specific requirements for selection of winners and award of prizes for esports tournaments, accordingly, general contract and consumer law rules will apply to the proper selection of winners.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Yes, organizers can enforce contractual provisions as set out in the T&Cs of the tournament. E.g. sanctions can be found in the Rules of Discipline of HUNESZ, such as prohibition or ban, oral or written warning, withdrawal of benefits, or fine.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

No, however, if players are paying in cash to participate in an esports tournament which contains elements of

chance and obtain a winning in cash or in kind with economic value, there is a risk of requalification of the tournament as gambling.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

No, however, the esports tournament organizers may regulate these types of tournaments differently.



## Other local requirements

### Are there any other key local requirements?

Esports are currently not generally recognized in Hungary as sports. Additionally, there is no dedicated regime applicable to esports.

As a consequence, a deeper review of the mechanic of esports tournaments is necessary to avoid challenges, e.g. the applicability of gambling rules.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

There is no such requirement or need.



## Translations

### Are the terms of the esports tournament required to be translated by law?

Although not a legal requirement, but T&Cs should appear in Hungarian in order to be clear and unambiguous for participants in Hungary.



## Penalties for non-compliance

### What are the penalties for non-compliance?

If esports activities are considered as unlawful gambling activity differentiated amount of fines can be imposed subject to the type of infringement. The maximum amount of fine (e.g. in the case of gambling activity without a license) is app. EUR310,000. Carrying out gambling activity without a license may involve criminal charges as well.

In the case of breaching consumer protection laws, consumer protection fine may be imposed by the Consumer Protection Authority or the Competition Authority.

## Key contact



**Zoltan Kozma**

**Counsel**

DLA Piper Hungary

T +36 1 510 1100

[zoltan.kozma@dlapiper.com](mailto:zoltan.kozma@dlapiper.com)

# India



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Federal legislation – Public Gambling Act, 1867 (“**PG Act**”) prohibits gambling activities primarily games of chance, and games which are predominantly games of chance with ancillary elements of skill. Similarly, most state legislations restrict applicability to games of chance.

Sikkim Online Gaming (Regulation) Rules, 2009 (“**Sikkim Rules**”) provides licenses for online games such as Roulette, Black Jack, Poker, Poker Dice, including sports betting.

Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 (“**Nagaland Act**”) contemplates issuance of online gaming licenses, but only for games of skill.

Prevention of Money Laundering Act, 2002 (“**PMLA**”) regulates anti-money laundering, and entities carrying out activities for playing games for cash or for kind (including online gaming sites and casinos) are required to adhere to these provisions.

Under the Foreign Direct Investment Policy (“**FDI Policy**”) of India, Foreign Direct Investment (“**FDI**”) is prohibited in entities that are involved in the lottery business (including government, private lottery, online lotteries) as well as gambling/betting (including casinos). It also prohibits foreign technology collaborations such as, licensing for franchise, trademark, brand name, contract for lottery business, gambling and betting activities.

The Indian Penal Code, 1860 (“**IPC**”), inter alia, prohibits sale, hire, distribution, exhibition, and circulation of any obscene objects and penalizes any person who engages, advertises, promotes, offers, or attempts to do obscene activity.

Information Technology Act, 2000 (“**IT Act**”) Act regulates the electronic transmission of information relating to gambling, and inter alia, penalizes scandalous/obscene content.

Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011 (“**SPDI Rules**”) govern the collection, processing and transfer of Personal Information/ Sensitive Personal Data or Information (“**SPDI**”).

## With regard to the applicability of prize promotion regulations to esports activities

Same as above. There are no separate rules apart from the laws/regulations mentioned above.

## With regard to the advertisement of esports related activities

Consumer Protection Act, 2019 (“**CPA**”) (prohibits misleading or false advertisements)

Advertising Standards Council of India (“**ASCI**”) published code (“**ASCI Code**”). ASCI is a non-statutory body which has published guidelines on advertising, which amongst others, prohibits:

- advertisement promotes illegal, immoral and indecent activities.
- advertisements for any product, the use of which is banned under law, or advertisements that present criminality as desirable or encourages people to emulate it.

IT Act (transmission of obscene content/sexually explicit content)

Information Technology (Intermediary Guidelines Rules) 2011 (prohibition on intermediaries such as network service providers to host or transmit content which relates to or encourages gambling.)

IPC (prohibition on distribution, distribution, circulation of obscene object)

The Indecent Representation of Women (Prohibition) Act, 1986 (prohibits depiction of women in indecent, derogatory or denigrating manner or injuring public morality including through advertisements)

Young Persons (Harmful Publications) Act, 1956 prohibits distribution, advertisement or selling of harmful publication which portrays any act of violence or commission of offences in a way which incites a young person.

### With regard to the protection of intellectual property rights as part of esports activities

The Copyright Act, 1957 ("**CR Act**") (regulates copyright and infringement issues)

Trade Marks Act, 1999 ("**TM Act**") (protects trademarks and provides for infringement related matters)

### With regard to the processing of personal data as part of esports activities

SPDI Rules (governs collection, processing and transfer of Personal Information/SPDI)



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

In general, most legislations do not have extra-territorial application. When, however, a substantial nexus has been established that something in violation of law is being done, and this affects Indian residents, regulators may consider acting against non-resident promoters of esports.

The IPC and the IT Act have extraterritorial applicability. Further, Indian regulators also have the power to block foreign websites which violate local laws.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

There is no dedicated legal or regulatory regime applicable to esports.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

While it is a common market practice in India for product games/product platforms to be periodically certified/verified by external recognized agencies, there is no legal requirement to do so.



### Sponsorship of esports tournaments

#### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

In India, while there is no direct legislation pertaining to advertising/soliciting/marketing of esports tournaments, the advertising laws as discussed above, primarily govern the fundamental principles of sponsorship relating to esports tournaments on similar lines.



### Consumer Protection – advertising

#### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

There are no specific regulations in this regard. However, the advertising laws (discussed above) prohibit misleading or false advertisements or advertisements which promote illegal or obscene activities or activities prohibited by any law in force.



### Participation in esports tournaments

#### Can players pay an admission fee to participate in esports tournaments?

On principle, participation of players in a gambling activity alludes to money earned based on the happening or non-happening of an uncertain event. Therefore, while there are no restrictions per se,

in having players pay a price to participate, this would be a feature that may bring into question whether the engagement is that of a 'gambling' activity. Therefore, agreements with players need to be structured so that such risk is avoided.

However, esports do not fall under the umbrella of gambling activities and therefore there are no explicit restriction on asking players to pay a participation fee for esports tournaments in India.

## Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

The capacity to contract and therefore to participate in an esports tournaments under Indian law is attained at the age of 18. In case of individuals younger than that age, parental supervision or consent may be necessary.

## Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

Yes. There are no specific regulations governing these engagements. However, criteria of selection of participants may be objective, transparent, and non-discriminatory.

## Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

While there are no stipulated requirements for T&Cs in relation to esports tournaments, some particulars of T&Cs generally found in similar agreements are stated below:

- Competence to contract (confirmation that the participant is at least 18 years of age)
- Consideration
- Competitive integrity
- Image rights/personality rights

- IP assignment
- Termination

In addition, the mechanics of esports tournaments should be structured to demonstrate that actual skills are required to participate and win these tournaments, and that players are to necessarily comply with data protection, advertising regulations and overall principles of transparency, fairness and justice.

## Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

There are no standard requirements/procedures for selection of winners and award of prizes, for esports tournaments. Winners are generally selected with respect to the rules of the tournament.

## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

In India, since there is no specific statute governing/regulating esports, the imposition of sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament, by the organizers, has not been expressly laid down. This imposition of sanctions would generally need to find ground as per the settled (and accepted) terms and conditions of the esports tournament.

## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

There are no restrictions on the type of prizes that may be awarded to winners as part of esports tournaments. The organizers may choose at their discretion as long as the acquisition, distribution or use of the prizes are not unlawful.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

A majority of the state legislations, as well as the PG Act, were enacted much before the advent of online gaming/esports, and hence, mostly refer to gambling activities which take place in physical premises (such as a 'common gambling house'). Thus, their applicability to online gaming is questionable. This being said, licensing requirements and provisions of Sikkim Rules and Nagaland Act may be adhered to within the territories of these states.



## Other local requirements

**Are there any other key local requirements?**

As such, apart from the necessary requirement that participants and organizers, must be competent to contract (at least 18 years of age), there are no other key local requirements in relation to esports tournaments in India.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

There is no specific requirement, as such, of adherence to specific timing that has been prescribed.

Separately, one requirement of timing to be maintained is that SPDI cannot be held/stored with organizers, longer than is necessary for a lawful purpose for which it was collected.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

There is no requirement for the terms of the esports tournament to be translated under Indian laws. Typically, terms and conditions are published in English.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

Under the PG Act, penalty is prescribed in the form of imprisonment, fine, or both, for contravention. An offence of opening/keeping/using a common gaming-house is punishable with a fine of up to INR200 and imprisonment up to a period of three (3) months. A person found in a gaming house is liable to a fine of up to INR100 or imprisonment up to one (1) month.

Additional sanctions and fines can apply, depending on the challenged breach; for instance, the fines as stipulated under various legislations, as discussed above, and/or any general civil/criminal breach that may take place, during the course of the tournament.

## Key contact

**Sajai Singh**

**Partner**

J. Sagar Associates

sajai@jsalaw.com

# Indonesia



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

There is no 'single' law which regulates esports and related activities in Indonesia. Instead, rules relating to esports and related activities are found across a wide range of relevant laws and regulations including the below laws which form part of the complex regulatory framework (which is non-exhaustive):

## With regard to the applicability of gambling laws

In general, all forms of gambling are illegal in Indonesia (except sweepstake (locally referred to as *undian gratis berhadiah*), which is not legally considered as a form of gambling and is regulated by the government under the prize promotions framework). Article 303 of the Indonesian Criminal Code defines gambling as any game whereby the possibility of gain or success depends on luck or chance, notwithstanding whether such possibility is increased by the training carried out by, or the expertise, of the player. It includes bets relating to the outcome of contests or other games that are not concluded among those who take part therein, as well as any other form of betting. On the other hand, Minister of Social Regulation No. 12 of 2019 on the Implementation of Sweepstakes defines sweepstake as any opportunity held by an entity without charging any fee for those who, after fulfilling certain conditions, can participate in obtaining a prize in the form of money or goods which will be given to winners chosen at random or by other means that are not affected by the participants.

We set out below some laws and regulations that may be relevant to esports:

Indonesian Criminal Code, which makes gambling in Indonesia criminal offense under Article 303.

Law No. 7 of 1974 on Gambling Control makes gambling in any form a criminal offense, punishable by a fine, imprisonment or both (Articles 1 and 2(1)).

Law No. 11 of 2008 as last amended by Law No 19 of 2016 on Electronic Information and Transactions ("**EIT Law**"). Any distribution and/or transmission and/or provision of access to electronic information and/or electronic materials with gambling content is a prohibited conduct under Article 27(2) of EIT Law, punishable by a fine, imprisonment or both.

Government Regulation No. 71 of 2019 on the Implementation of Electronic System and Transactions ("**GR 71/2019**" which together with the EIT Law, the "**EIT Regulations**"). Articles 90(c), 95 and 96 and of GR 71/2019 state that the government must prevent the distribution and usage of electronic information and/or electronic material with content that is prohibited by applicable laws and regulations, including by terminating access or ordering the relevant electronic system provider to terminate access to such electronic information and/or electronic material. The explanatory note to GR 71/2019 specifically mentions electronic information and/or electronic material with gambling content as an example of electronic information and/or electronic material having content that is prohibited by applicable laws and regulations.

## With regard to the applicability of prize promotion regulations to esports activities

Law No. 22 of 1954 on Sweepstakes ("**Sweepstakes Law**"), If any esports event to be held in Indonesia contains an element of sweepstake, the requirements under the Sweepstakes Law and MSR 12/2019 (as defined below) must be observed. Under the Sweepstakes law, any party organizing a sweepstake must obtain a license from the relevant authority. The current licensing framework is provided under MSR 12/2019 which will be discussed further below.

Minister of Social Regulation No. 12 of 2019 on the Implementation of Sweepstakes ("**MSR 12/2019**"). Under MSR 12/2019, any party organizing a sweepstake must obtain a license from the Minister of Social. MSR 12/2019 also sets out the requirements in relation to, among other things, (i) the information that the sweepstake organizer must provide to prospective participants and (ii) the mechanics for selection and announcement of winners.

Law No. 8 of 1999 on Consumer Protection ("**Consumer Protection Law**"). The Consumer Protection Law provides a framework to protect consumers of goods and services. Article 14 of the Consumer Protection Law states that if a business actor provides a prize by way of a sweepstake for the purpose of promoting goods and/or services in its trading activities, it shall be prohibited from (i) withdrawing the prize after the

promised deadline, (ii) announcing the sweepstake result without using mass media, (iii) giving a prize that is not in accordance to its promise and (iv) replacing the prize with an item having value that is not equivalent to the value of the promised prize.

### With regard to the advertisement of esports related activities

Consumer Protection Law sets out guidelines on advertisements and promotions of goods and services that must be adhered to by business actors. Among other requirements, the Consumer Protection Law prohibits business actors from offering, promoting or advertising goods and/or services incorrectly.

Government Regulation No. 59 of 2001 as last amended by Government Regulation No. 89 of 2019 on Guidance and Supervision in relation to the Implementation of Consumer Protection (together with the Consumer Protection Law, the **“Consumer Protection Regulations”**). The regulation establishes the Consumer Protection Agency tasked to, among other things, protect consumers’ rights and supervise the implementation of consumer protection measures.

Law No. 40 of 1999 on the Press (**“Press Law”**). The Press Law contains requirements on, among other things, the content of advertisements that can be featured in print and electronic media.

Law No. 32 of 2002 on Broadcasting (**“Broadcasting Law”**). The Broadcasting Law contains requirements on, among other things, the content of advertisements that can be broadcasted through radio and television.

EIT Regulations. Under EIT Regulations, business actors offering products through an electronic system must provide complete and accurate information in relation to the terms of the contract, the producer of the product and the relevant product being offered, and must be clear in providing information in relation to contract offer or advertisement.

### With regard to the protection of intellectual property rights as part of esports activities

Law No. 28 of 2014 on Copyrights, which regulates copyrights and matters related thereto (including registration of copyrights in Indonesia).

Law No. 13 of 2016 on Patents, which regulates patents and matters related thereto (including registration of copyrights in Indonesia).

Law No. 20 of 2016 on Trademarks and Geographic Indications, which regulates trademarks and matters related thereto (including registration of trademarks in Indonesia).

Law No 30 of 2000 on Trade Secrets, which regulates the protection of trade secrets in Indonesia.

EIT Law. Article 25 of EIT Law states that any electronic information or electronic material prepared as intellectual work, website or intellectual work contained therein are protected as intellectual property. Further, EIT Law also recognises the protection of domain names using the principle of first registration.

### With regard to the processing of personal data as part of esports activities

EIT Regulations, Article 16 of the EIT Law states that any use of information through electronic means which relates to personal data of an individual must be carried out with the consent of the relevant individual. GR 71/2019 further sets out limitations and requirements applicable to the collection and processing of personal data through electronic means.

Minister of Communication and Information Regulation No. 20 of 2016 on Personal Data Protection in Electronic System (**“MOCI 20/2016”**). The regulation is an implementing regulation to the EIT Regulations and provides personal data protection measures in relation to the use of personal data via electronic means.



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Generally, Indonesian laws are not enforceable against entities operating abroad. However, Article 2 of the EIT Law specifically mentions that it applies to any person carrying out any acts governed by the EIT Law, whether in Indonesia or outside of Indonesia, which is detrimental to the interests of Indonesia.

In practice, the government expects foreign entities to comply with applicable laws and regulations in Indonesia if they carry out esports events or activities within Indonesia or involving Indonesian players and/or consumers.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

ESports are not yet formally recognized as a sport in Indonesia and there is no dedicated legal or regulatory regime applicable to esports. However, the Ministry of Youth and Sports announced in 2019 an intention to regulate esports with the view to promoting esports in Indonesia.

Indonesia also established a local esports association in January 2020 to nurture professional gamers and introduce regulations for a potential domestic league.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

Yes, there are specific classification and registration requirements applicable to the provision of video game services online as regulated under the Minister of Communication and Information Regulation No. 11 of 2016 on the Classification of Online Interactive Games (“**MOCI 11/2016**”).

MOCI 11/2016 requires online video games to be classified based on their content and the age of users. It also specifically prohibits video games which contain pornographic content, promote gambling or otherwise violate applicable laws.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments, provided that regulations applicable to advertising for gambling activities are complied with.

Further, sponsorship agreements entered into with tobacco/cigarette companies must be carefully reviewed to ensure compliance with Government Regulation

No. 109 of 2012 on the Control of Materials Containing Addictive Substances in Tobacco Products in the interest of Health, which restricts sponsorship and advertising activities by tobacco companies. Similarly, sponsorship agreements entered into with alcoholic beverage companies must also be reviewed as the Broadcasting Law prohibits advertisements which promote Category C liquor (i.e. hard liquor).



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Yes. The advertising requirements provided in various legislations including the Consumer Protection Regulations, the Press Law, the Broadcasting Laws and the EIT Regulations must be complied with.

The Consumer Protection Law, in particular, regulates how goods and/or services should be advertised and prohibits, among other things, (i) the making of incorrect or misleading statements about the price or use or condition of the goods and/or services and (ii) the provision of goods and/or services which do not conform to the promised or advertised benefits.

In addition, videogames advertised should meet the requirements provided in MOCI 11/2016 applicable to their classifications.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Yes, the payment of participation fee can be provided in the rules or T&Cs of esports tournaments. However, given strict gambling regulations in Indonesia, hosts or organizers of the esports tournaments must ensure that the fee paid are not used for any gambling activities.

In addition, hosts or organizers of the esports tournaments should also ensure that the participation fee is denominated in Indonesian Rupiah (“**IDR**”) to comply with Law No. 7 of 2011 on Currency (which requires IDR to be used in any transaction within Indonesia).



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

The capacity to contract under Article 1330 of the Indonesian Civil Code (and therefore to participate in an esports tournament under Indonesian law) is obtained at the age of 21 or after an individual is married (whichever is the earlier). In case of individuals younger than that age, the capacity to contract is granted to their parents or legal guardians.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

It is possible to place any restriction to the players that can participate in an esports tournament provided that the requirements under the Consumer Protection Regulations are observed (for example, the hosts or organisers of the tournaments must deal with the players correctly and honestly without any discrimination).



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

There are no particular requirements for T&Cs of esports tournaments other than that they should be drafted in accordance with Indonesian laws particularly consumer protection, data protection and intellectual property laws.

The hosts or organizers of esports tournaments must also structure tournaments to avoid violation of any gambling regulations (i.e. by removing any gambling component, if any).



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

The selection of winners and award of prizes for esports tournaments are generally governed by the rules of the T&Cs of the esports tournaments. However, general contract and consumer protection regulations must be observed when selecting winners and awarding prizes.

As a general point, the T&Cs must clearly set out how winners are determined, and prizes will be awarded for the tournament. They must also be drafted in such a way as to ensure that participants fully understand the terms, and are not misled.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Hosts or organizers of esports tournaments may enforce the relevant contractual provisions (if any) as set out in the T&Cs of the tournaments provided that such T&Cs are not contrary to law.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There are no specific restrictions on the type of prizes to be awarded in an Esports tournament in Indonesia. Prizes may be awarded as cash or non-cash benefit.

However, hosts or organizers of esports tournaments should ensure that if participants are expected to pay a fee to participate in a tournament where prizes are awarded, the tournament must be purely a "game of skill" (i.e., does not contain elements of

chance). Otherwise, there is a risk of the tournament being classified as gambling (which, as previously mentioned, is illegal in Indonesia).



### Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

Yes. Land-based esports tournaments that are held in Indonesia must comply with the regulations applicable to the organization of events that may attract large number of attendees. Depending on the size of the event, a crowd permit may need to be obtained by the host or organiser. If the event serves alcoholic beverages, a separate alcohol sale permit must also be obtained.



### Other local requirements

**Are there any other key local requirements?**

Currently, esports are not formally recognized as a sport in Indonesia and there is no dedicated legal or regulatory regime applicable to esports. As a consequence, a more in-depth review of the organization of an esports tournament is necessary to avoid legal conflicts. The laws and regulations that are listed in the answer to question 1 are laws which, depending on the respective circumstances, may be applicable to an esports tournament. Notwithstanding this, there is strong support in the Indonesian Government to promote the development of esports in Indonesia and, as noted above to Question 3, the Ministry for Youth and Sport has plans to promote the development of esports by implementing regulations in support of esports. Hosts and organizations should therefore continue to monitor developments in this area.

In general, Indonesian child protection laws need to be observed if individuals under the age of 18 participate in esports tournaments (whether as players or viewers). In addition, where there is any data collection or processing activities, the requirements prescribed under the EIT Regulations and MOCI 20/2016 in relation to data collection or processing must also be observed.



### Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

Where applicable, hosts or organizers of esports tournaments will need to ensure that the appropriate permits or approvals have been obtained prior to holding esports tournaments. The application period to obtain such permits or approvals will need to be factored into the timing of esports tournaments. If the tournament is subject to prize promotion regulations (for example, if it involves sweepstakes), a license should also be obtained from the Ministry of Social in accordance with MSR 12/2019.



### Translations

**Are the terms of the esports tournament required to be translated by law?**

Yes. The T&Cs of esports tournament will need to be translated into Indonesian language to comply with Law No. 24 of 2009 on National Flag, Language, Emblem and National Anthem and Presidential Regulation No. 63 of 2019 on the Use of Indonesian Language, which requires any contract to be entered into with an Indonesian party be made in the Indonesian language or bilingually (in a foreign language and the Indonesian language).



## Penalties for non-compliance

### What are the penalties for non-compliance?

In case of violation of the Consumer Protection Regulations, an administrative sanction of IDR200 million (approximately USD13,724) may be imposed, in addition to, among others, an order to stop activities, seizure of assets or the revocation of business license. Criminal sanctions can also apply in the form of imprisonment or a fine (of between IDR500 million and IDR2 billion (approximately USD34,311 and USD137,243, respectively)).

In case of violation of the EIT Regulations (which prohibits, among others, online gambling contents), criminal sanctions can apply in the form of imprisonment and/or a fine (of between IDR600 million and IDR12 billion (approximately USD41,183 and USD823,656, respectively)).

Law No. 7 of 1974 on Gambling Control imposes criminal sanctions in the form of imprisonment or a fine (of between IDR10 million and IDR25 million (approximately USD686 and USD1,716, respectively)) in case of its violation.

### Key contact



#### Philip Lee

##### Partner

DLA Piper Singapore Pte. Ltd.  
T +65 6512 6067  
philip.lee@dlapiper.com



#### Andhari Sidharta

##### Associate

DLA Piper Singapore Pte. Ltd.  
T +65 6512 6037  
andhari.sidharta@dlapiper.com

# Ireland



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

- Gaming and Lotteries Acts, 1956 to 2013 and Gaming and Lotteries (Amendment) Act 2019 (Gaming and Lotteries Acts)
- Betting Act, 1853
- Betting Act, 1931
- Betting (Amendment) Act 2015

## With regard to the applicability of prize promotion regulations to esports activities

- Advertising Standards Authority for Ireland's 'Code of Standards for Advertising and Marketing Communications in Ireland'
- Gaming and Lotteries Acts
- Consumer Protection Act 2007 (the CPA)

## With regard to the advertisement of esports related activities

- CPA
- Advertising Standards Authority for Ireland's Code of Standards for Advertising, Promotional and Direct Marketing
- Broadcasting Act 2009
- European Communities (Misleading and Comparative Marketing Communications) Regulations 2007
- European Communities (Misleading Advertising) Regulations 1988
- Sale of Goods and Supply of Services Act 1980
- Competition and Consumer Protection Act 2014

## With regard to the protection of intellectual property rights as part of esports activities

- Trademarks Act 1996
- Patents Act 1992
- Copyright and Related Rights Act 2000

## With regard to the processing of personal data as part of esports activities

- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the GDPR)
- Data Protection Act 2018
- European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (the ePrivacy Regulations)



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Typically, esports will be considered to be a competition under Irish law.

There are no specific Irish laws regulating competitions though competitions would be subject to general laws such as the laws relating to consumer protection and data protection if the competition is operated from Ireland or provided to consumers in Ireland. Irish consumer protection and data protection laws can be enforceable against entities operating abroad in certain instances.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

There are no specific Irish laws regulating esports. There is no regulation including eSport under the legal definition of sports.



### Technical requirements of esports tournaments

**Do videogames need any certification to be used as part of esports tournaments?**

There is no dedicated certification for the usage of video games in esports tournaments. Ireland uses the Pan-European Game Information age rating system for the classification of computer games for sale to the public. It is a voluntary system that retailers selling computer games are expected to follow.



### Sponsorship of esports tournaments

**Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?**

There are no specific requirements applicable to sponsorship agreements for esports tournaments.



### Consumer Protection – advertising

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

Currently, there no legislation regulating advertising of videogames during esports tournaments.



### Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

Yes.



### Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

Licensing and gambling law, as referred to above, as well as the general legal limitations on contracting with minors and in respect of safeguarding, may require that age restrictions must be applied. The Irish

data protection authority, the DPC, is in the process of finalising guidance on the protection of children's personal data and this is likely to be finalised in 2021.



### Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

The tournament organizer can impose restrictions on the players that can participate in the tournament by including such restrictions in the terms and conditions. An example would be restricting entrance to players that have achieved a certain minimum skill level or high score in the particular esports.



### Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

There are no particular requirements under Irish law for the terms and conditions of esports tournaments.

Terms and conditions of esports tournaments will need to comply with Irish consumer protection, contract and data protection laws.



### Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

General Irish contract and consumer protection law rules will apply to the proper selection of winners.



### Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

As a matter of Irish contract law, organizers can set rules/terms and conditions for tournaments and enforce them against the participants. Organizers can only enforce contractual provisions set out by the particular terms and conditions of the tournament.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

There are no restrictions on the types of prizes that can be awarded as part of esports tournaments.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

No.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

There are no different regulations applicable to online esports tournaments compared to land-based esports tournaments.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

For breaches of Irish consumer law under the **CPA**, if a trader is convicted of an offence, the court can require the trader to pay damages to a consumer who has suffered loss and can impose a fine or penalty on the trader. The maximum fine for a first offence is EUR3,000 (approx. USD3,360) on summary conviction.



## Other local requirements

**Are there any other key local requirements?**

The key legal requirements generally relate to obligations under Irish consumer protection and data protection laws.

For breaches of data protection law under **GDPR**, organizations can be fined up to EUR20 million (approx. USD22.4million) or 4% of annual worldwide turnover, whichever is higher. Fines imposed under the ePrivacy Regulations currently range from EUR5,000 (approx. USD5,600) on summary conviction to EUR250,000 (approx. USD280,000) for conviction on indictment.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

No, although time should be allowed to deal with data protection issues (e.g. ensuring an appropriate privacy policy is in place and including appropriate tick box functionality for consents).

## Key contact



**Conor McEaney**

**Senior Associate**

DLA Piper Ireland

T +353 1 4365470

conor.mceneaney@dlapiper.com

# Italy



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Legislative Decree 14 April 1948, No. 496 providing the monopoly of the Stare for the organization and exercise of games of skill and betting competitions, for which a reward of any kind is paid and whose participation requires the payment of a monetary stake

Law 13 December 1989, No. 401 providing criminal sanctions for the illegal offering of gambling and betting activities

## With regard to the applicability of prize promotion regulations to esports activities

Decree of the President of the Republic of 26 October 2001 No. 430

Bulletin Circular of the Ministry of Productive Activities (now Ministry of Economic Development) 28 March 2002, No. 1

## With regard to the advertisement of esports related activities

Legislative Decree of 6 September 2005 No. 206 (the 'Consumer Code')

Legislative Decree 2 August 2007 No. 145 (Misleading advertising)

Legislative Decree 2 August 2007 No. 146 (Unfair commercial practices)

Commercial Communication Code of the Advertisement Self-Regulatory Authority

Article 9 of Law Decree 12 July 2018, No. 87 setting out the Italian gambling advertising ban

Decision No 132/19/CONS of 18 April 2019 of the Italian Communications Authority setting guidelines on the interpretation of Article 9 of Law Decree 12 July 2018, No. 87 setting out the Italian gambling advertising ban

## With regard to the protection of intellectual property rights as part of esports activities

Law 22 April 1941, No. 633 setting out Italian law on copyright and connected rights

Legislative Decree 10 February 2005, No. 30 setting out the Italian Industrial Property Code regulating among others trademarks and patents

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

Legislative Decree of 30 June 2003 No. 196 and subsequent amendments with regard to the processing of personal data



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Entities operating abroad shall comply with Italian law in case of esports events addressed to Italian players and/or consumers, even if they are also open to players and/or consumers of other jurisdictions.

There is no case law on the matter. However, the usage of claims in Italian, the reference to Italy in the Ts&Cs and other circumstances might be considered by Italian authorities as indicators of the applicability of Italian law.

The applicability of Italian law can lead to significant obligations under rules, including tax liabilities.



## Recognition of esports as a sport

**Is there any regulation according to which esports can fall under the legal category of sports?**

Esports are not formally recognized as a sport in Italy and there is no dedicated legal or regulatory regime applicable to esports.



## Technical requirements of esports tournaments

**Do videogames need any certification to be used as part of esports tournaments?**

There is no dedicated certification for the usage of video games in esports tournaments, apart from the certifications necessary for their sale to the public, such as those provided by the Italian video game and Internet content age rating system are based on the self-certification rule.

However, if esports tournaments are subject to prize promotion regulations, a certification will be necessary.

In any case, it might be recommendable to avoid potential disputes, even if not expressly required.



## Sponsorship of esports tournaments

**Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?**

There are not any specific requirements applicable to sponsorship agreements for esports tournaments, other than those provided by Article 9 of the Law Decree 12 July 2018, No. 87 that forbids any form of direct and indirect advertising related to betting activities, gambling and other types of games with cash winnings.

Also, the type of consideration due by the sponsor and the services provided by and to the sponsor can lead to regulatory and tax issues.



## Consumer Protection – advertising

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

Advertising regulations on unfair commercial practices are specifically aimed at protecting consumers and minors in Italy. In particular, there have been cases in Italy with reference to loot boxes where it was challenged (i) the lack of transparent information as to the existence of payments within the game and (ii) the exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.



## Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

The Legislative Decree 14 April 1948, No. 496 grants the monopoly to the State on *“the organization and exercise of games of skill and betting competitions, for which a reward of any kind is paid and whose participation requires the payment of a monetary stake”*.

In this respect, the risk is that the payment of an annual registration fee to an esports tournament league might be considered as the monetary stake against which the reward is granted.

Therefore, agreements with players need to be structured so that such risk is avoided.



## Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

The capacity to contract and therefore to participate in a esports tournaments under Italian law is obtained at the age of 18. In case of individuals younger than that age, the capacity to contract for minors is granted to parents or other persons with parental responsibility.



## Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

Criteria of selection of participants need to be objective, transparent, and non-discriminatory.

If Italian prize promotion regulations apply, under some circumstances the esports tournament shall be limited to participants located in Italy.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers can only enforce contractual provisions set out by the Ts&Cs of the tournament. However, limitations can apply to actions that can be taken against players without a court order.



## Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

Stringent requirements apply to the contents of Ts&Cs and the formalities to be followed if an esports tournament is subject to prize promotion regulations.

Additionally, Ts&Cs shall be drafted in accordance with Italian consumer laws, if the tournament is not directed to professional players, and with misleading advertising rules, if the tournament is addressed to professional players.

Additionally, the mechanic of the esports tournament shall be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations and intellectual property laws.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

The absence of an *ad hoc* regulation for esports tournaments might make Italian prize promotion regulations applicable, depending on the mechanic of the tournament. If these provisions apply, then prizes can only be in kind, not in cash.

If players are paying in cash to participate in an esports tournament which contains elements of chance and obtain a winning in cash or in kind with economic value, there is a risk of requalification of the tournament as gambling.



## Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

If the tournament falls under the prize promotions regulations, these activities require the presence of a public notary, who is in charge of drawing up the minutes of the results of the competition. Also, in such a case, the video game shall be certified to prove the inability to alter its operation.

Apart from such a scenario, general contract and consumer law rules will apply to the proper selection of winners.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

Where the Italian gambling laws apply, the online esports tournaments can fall under the online gambling licensing regime. Additionally, in case of international online esports tournaments, exemptions to the applicability of prize promotion regulations might be relied on.



## Other local requirements

### Are there any other key local requirements?

Operators holding the Italian general online gambling and betting license as well as those holding a betting shop license can offer bets on esports events, within limits set out by gambling regulations and subject to the approval of the type of esports event and the type of bet by the Italian gambling regulator.

Esports are not currently recognized in Italy as sports, and therefore exemptions applicable to them are not applicable. Additionally, there is no dedicated regime applicable to esports.

As a consequence, a deeper review of the mechanic of esports tournaments is necessary to avoid challenges.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Specific timing for the performance of esports tournaments applies if they are subject to prize promotion regulations. Such rules require the filing with the Ministry of the Economic Development of the Ts&Cs of the event at least 15 days prior to its beginning.



## Translations

### Are the terms of the esports tournament required to be translated by law?

Under consumer regulations, the information intended for consumers and users shall also be shown in Italian and must be shown in characters that are no less visible and legible than those used for the other languages.

In the case of esports tournaments addressed to professional players, the requirement would still apply if the event is subject to prize promotion regulations.



## Penalties for non-compliance

### What are the penalties for non-compliance?

In case of infringement of the law for unfair practices, an administrative sanction between EUR5,000 and EUR5,000,000 can be issued. On the contrary, in case of breach of gambling laws, criminal sanctions can apply. Additional sanctions and fines can apply, depending on the challenged breach.

## Key contact



### Giulio Coraggio

**Partner**

DLA Piper Studio Legale Tributario  
Associato

T +39 02 80 618 619

giulio.coraggio@dlapiper.com

# Japan



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Penal Code (Act No. 45 of 1907), Chapter 23 stipulates crimes related to gambling and lotteries

## With regard to the applicability of prize promotion regulations to esports activities

Act against Unjustifiable Premiums and Misleading Representations (Act No. 134 of 1962) (the "AUPMR")

Act on Control and Improvement of Amusement Business, etc. (Act No. 122 of 1948)

## With regard to the advertisement of esports related activities

Basic Act on Consumer Policies (Act No. 78 of 1968)

Civil Code (Act No. 80 of 1896)

Unfair Competition Prevention Act (Act No. 47 of 1993)

The AUPMR, The AUPMR prohibits misleading advertisements.

## With regard to the protection of intellectual property rights as part of esports activities

Trademark Act (Act No. 121 of 1959)

Copyright Act (Act No. 48 of 1970)

Patent Act (Act No. 121 of 1959)

## With regard to the processing of personal data as part of esports activities

Act on the Protection of Personal Information (Act No. 57 of 2003)



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Whether the laws are enforceable against entities operating abroad depends on the laws in question.

For example, the Penal Code, which provides criminal sanctions for the illegal offering of gambling and betting activities, will generally be applied in cases where the crimes (or a part of the crimes) are committed within Japan (Article 1, paragraph 1 of the Penal Code).

Please note that since the definition of when "the crimes are committed within Japan" is vague and offshore online gambling is not expressly prohibited, it falls into a legal grey zone.

The AUPMR, which regulates promotions of esports tournaments may apply if the promotion is operated outside of Japan, but targets Japanese consumers (for example by a promotion through a Japanese language website or specifying that Japanese consumers are eligible for the prize promotion).



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Japan and there is no dedicated legal or regulatory regime applicable to esports.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

No. There are no special certifications for videogames to be used in esports tournaments.

Under the Penal Code, the activity of “running a place for gambling” is a criminal act. “Gambling” means wagering money or something of value aiming for an outcome where the winner is determined based on chance or the outcome is unknown for the players. Also, an individual who participates in “gambling” may be punished as well. Therefore, agreements with players need to be structured so that such risk is avoided to the extent possible.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

No. Please note that if the esports tournaments are illegal, sponsoring such tournaments may be considered as abetting such illegal activities. Please refer to question number 5.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

The capacity to contract on one's own and therefore to participate in an esports tournaments under Japanese Civil law is obtained at the age of 20 (the age of majority is changed to 18 years old in 2022). In case of individuals younger than that age, the capacity to contract for minors is granted to parents or other persons with parental responsibility.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

There is no dedicated regulation on the advertising of videogame during esports tournaments. However, advertisements are, as a general rule, regulated by the AUPMR. The AUPMR prohibits misleading representations concerning the contents or standards of goods/services (such as a misrepresentation of quality) and the terms and conditions of goods/services (such as a misrepresentation of price). Also, self-industry guidelines provide certain guidance to the method and content of advertisements.

In addition, if esports tournaments fall under the “Amusement Business” defined in the Act on Control and Improvement of Amusement Business (the “Amusement Business Act”), minors are not allowed to enter the tournament venue at night and detail of such regulation is stipulated by the regulations of each prefecture. For example, in Tokyo, people under the age of 16 are not allowed to enter a tournament venue after 10pm (after 6 pm-10 pm they can enter a tournament venue if they are accompanied by their parents or other persons with parental responsibility). Please refer to question No. 13 for the cases that esports tournaments are considered as an Amusement Business.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

It is possible for players and an organizer of the esports tournaments to be guilty of a criminal offence (gambling) if the organizer collects participation fees for attending or participating in the esports tournaments and the prize money is funded by participation fees.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

Yes, but the criteria for selecting players need to be objective, transparent and non-discriminatory.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

No. There are no special requirements for T&Cs for esports tournaments.

Additionally, the mechanics of the esports tournament needs to be structured to avoid the applicability of gambling laws and the Amusement Business Act and must, in any case, comply with advertising law, data protection regulations and intellectual property laws.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

The methods for selecting winners and the requirements for awarding prizes are not regulated under the AUPMR or any other relevant guidelines or notices. Methods can be determined at the discretion of the organizer. However, if a certain selection method was made public but the actual selection was conducted using a different method, it could be a violation of the AUPMR's prohibition against misrepresentations.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can only enforce contractual provisions set out by the T&Cs of the esports tournaments.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

#### 1. AUPMR regulation

There are limits with respect to the value of items to be given as a prize if the prize is offered as a means of inducing consumers in connection with a transaction involving goods or services that the organizers

of the esports tournaments provides under the AUPMR. However, if the prize can be interpreted as "remuneration for work" (not as "a means of inducing customers"), the limitation would not apply. For example, if participants are limited to professional players, the prize could be interpreted as remuneration of work.

If the AUPMR applies, the amount of prizes awarded by chance is limited to (i) no more than 20 times the amount of the transaction if the transaction value is less than JPY5,000 or JPY100,000 if the transaction value is JPY5,000 or more and (ii) the total amount of the prizes is limited to no more than 2% of the expected total amount of the transaction for the promotion period.

#### 2. Amusement Business Act regulations

In addition, if the esports tournaments fall under the "Amusement Business" specified by Amusement Business Act, offering cash prizes or the buyback of prizes which the organizer awards to the winner are prohibited (Please refer to question No. 15 for the detail of the regulation under the Amusement Business Act).



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

Under the Penal Code or the AUPMR, online and offline are not distinguished. However, from the viewpoint of the Amusement Business Act, online esports does not fall under the Amusement Business, thus then online esports tournaments are not subject to the regulations on the Amusement Business Act.



## Other local requirements

### Are there any other key local requirements?

As mentioned in question No. 13, if the esports tournaments is an "Amusement Business" as specified by the Amusement Business Act, offering cash prizes or the buyback of prizes which the organizer awards to the winners is prohibited and the approval of local public safety committees is required to hold an offline esports tournaments.

The business having customers enjoy games at the facility that gaming machines are equipped (the "gaming facility") such as an amusement

arcade and which satisfies the following conditions would fall under the definition of an "Amusement Business":

- (i) the business place can be deemed as a space independent from the other spaces
- (ii) the business is continually performed
- (iii) the business aims for profits

Practically, esports tournaments are not regulated strictly by the local police in terms of the Amusement Business Act. We understand that this is because esports tournaments are different from the typical Amusement Business such as an amusement arcade. However, this is a gray area in Japan and if such esports tournaments result in corruption of the public morals in the future, the regulation under the Amusement Business Act would become more strict. In any case, if the organizers will launch esports tournaments, it is advisable to consult with local counsels in advance.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

No



## Translations

**Are the terms of the esports tournament required to be translated by law?**

There is no language requirement. However, as many Japanese consumers may not fully understand the terms in English or any other foreign languages, it is recommended that the terms be translated into Japanese.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

### 1. The Penal Code

Under the Penal Code, to "run a place for gambling" is punishable by imprisonment with work for not less than 3 months but not more than 5 years.

### 2. The AUPMR

The CAA will investigate the activities of an esports tournament organizer that it suspects is violating the AUPMR. The CAA will give that esports tournament organizer the opportunity to offer evidence in its favor and/or take measures to end the practices that the CAA views as violations. If the esports tournament organizer refuses to cooperate with the CAA or provides false information to the CAA upon such investigation, the responsible individual of the esports tournament organizer may be punished with imprisonment with work for no more than 1 year or a criminal fine of up to JPY3,000,000 and the company employing the individual may be made subject to a fine for the same amount.

If the CAA is not satisfied by the evidence and/or actions of the esports tournament organizer, it may issue a formal cease-and-desist order (CDO) to end the offending practice. Violation of a CDO is punishable by up to 2 years imprisonment or a criminal fine of up to JPY3,000,000 for the responsible individual. In addition to the above sanctions on the individual, the company employing the individual may be made subject to a fine of up to JPY300,000,000. However, fines and prison sentences are rarely imposed.

### 3. The Amusement Business Act

The business operator who engages in the "Amusement Business" without necessary approval will be subject to imprisonment with work for no more than 2 years or a fine of no more than JPY2,000,000, and one that offers cash prizes will be subject to imprisonment with work for no more than 6 months or a fine of no more than JPY1,000,000.

## Key contacts



### Tomomi Fujikoge

#### Of Counsel

DLA Piper Tokyo Partnership  
T +81 3 4550 2817  
tomomi.fujikoge@dlapiper.com



### Naoto Kosuge

#### Associate

DLA Piper Tokyo Partnership  
T +81 3 4550 2823  
naoto.kosuge@dlapiper.com

# Luxembourg



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

There is no specific legislation on esports in Luxembourg.

The Luxembourg Sport Ministry is waiting for the conclusions of the Luxembourg National Olympic Comity (the "COSL") on whether or not esports should be considered as sports to legislate on this matter. If esports were to be considered as sports, the Sports Law of 17 August 2005 as amended should be applicable.

## With regard to the applicability of gambling laws

The Law of 20 April 1977 on the operation of games of chance and betting in connection with sporting events as amended (the "1977 Law"), is the main law regulating gambling in Luxembourg. It states a general prohibition for the operation of a business of games of chance, except for operators fulfilling certain conditions to be granted authorizations from the Luxembourg Ministry of Justice.

The Law of 22 May 2009 on the National Foundation and the National Lottery, grants the National Lottery the exclusive right to operate its distribution networks for national lotteries and sports betting products, including online ones.

The Grand-Ducal Regulation of 7 September 1987 on sports betting, provides for the conditions to obtain an authorization from the Ministry of Justice to sell sports betting products.

## With regard to the applicability of prize promotion regulations to esports activities

The Law of 30 July 2002 regulating prize promotions (the "2002 Law") was repealed in 2016 without being replaced. Under a strict interpretation of the 1977 Law, prize promotions could thus be considered as being prohibited; however, they are still being organized in Luxembourg on a regular basis.

In practice, the principles of the repealed 2002 Law are still applied by a good number of operators on a risk based approach. However, from a general standpoint, the legal framework for prize promotions in Luxembourg is currently unclear, and its potential application to esports activities is therefore uncertain.

## With regard to the advertisement of esports related activities

Article 122–2 et. Seq. of the Luxembourg Consumer Code regulating misleading marketing advertisement practice (not specific to esports).

The Law of 30 May 2005 on data protection in the sector of electronic communications as amended, regulating unsolicited communications (not specific to esports).

## With regard to the protection of intellectual property rights as part of esports activities

The Copyright Law dated 18 April 2001, as amended (short title).

The Benelux Convention on Intellectual Property dated 25 February 2005 as amended, regulating trademarks and designs.

The Patent Law dated 20 July 1992, as amended.

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

Law of 1 August 2018 on the organization of the National Commission for Data Protection and implementation of EU Regulation 2016/679 repealing the law of 2 August 2002 on the protection of persons with regard to the processing of personal data.



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

As the respective rules are criminally sanctioned, the Luxembourg authorities consider that the 1977 Law shall apply to any Luxembourg operators but also to foreign operators targeting Luxembourg residents. Therefore, if the Luxembourg gambling laws were to apply to esports, entities operating abroad should

comply with Luxembourg law, in case of esports events targeting Luxembourg players and/or consumers, even if they were also open to players and/or consumers of other jurisdictions.

There is no case law in the field of esports for the time being.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not yet formally recognized as a sport in Luxembourg and there is no dedicated legal or regulatory regime applicable to Esports.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification for the usage of videogames in esports tournaments, apart from the certifications necessary for their sale to the public.

Luxembourg is part of the Pan European Game Information ("PEGI") providing an age rating recommendation system for videogames and a Code of Conduct including information on various risks using video games and online platforms.

Articles 383 et seq. of the Luxembourg Criminal Code provide protection for the youngest by banning the production, diffusion and commercialization of violent, pornographic contents or contents which could severely violate human dignity. If esports were eventually to be considered being sports, the prospective Luxembourg esports federation agreed by the COSL would then set up some required certifications as to the videogames played in tournaments.



### Sponsorship of esports tournaments

#### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments other than those concerning advertisements provided for under article 122-4 of the Luxembourg Consumer Code regulating misleading marketing practice.

Under the previously applicable Prize promotion law of 2002, the organizer of a prize promotion had an obligation to establish, in advance of any advertising message pertaining to the prize promotion, some terms specifying the conditions and the course of such commercial operation. Those terms had to be filed with a bailiff who ensured their lawfulness. However, as stated above, the 2002 Law was repealed and the framework applicable to prize promotions in Luxembourg currently is unclear.

In Luxembourg, sponsorships can be tax deductible under certain conditions. Sponsorships are managed by the National Culture Fund and the Film Fund Luxembourg. As it is currently not certain whether or not esports are to be considered as sports, an esports organization could apply for an accreditation of its activities (to be allowed to receive donations that are tax deductible) from the National Culture Fund if its activities are finally considered as sports, or from the Film Fund Luxembourg if its activities are considered as audiovisual ones.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Under Luxembourg law, “commercial practices” refer to any commercial action, omission, conduct, approach or communication, including advertising and marketing.

Articles 122–2 et. Seq. of the Luxembourg Consumer Code prohibit misleading marketing advertisement practices.

Moreover, article 383 of the Luxembourg Criminal Code, which provides for the protection of youth, prohibits the production, diffusion and commercialization of messages “of a violent or pornographic nature or of such a nature as to seriously offend human dignity” when such messages are likely to be viewed or perceived by a minor.

The above provisions could apply to the advertising of videogames.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Can players pay an admission fee to participate in esports tournaments?

There are currently no specific requirements applicable to participation fees in esports tournaments under Luxembourg law. If esports are eventually considered being sports, participation fees will likely be controlled by the prospective esports federation.

In the event when the legislator would consider that esports should fall within the scope of the 1977 Law, the Ministry of Justice would have the responsibility to issue authorizations to esports private operators, and esports tournaments registration fees would thus likely be regulated accordingly. The Grand-Ducal Regulation of 7 September 1987 on sport betting, sets out the conditions to fulfil in order to obtain an authorization from the Ministry of Justice.

In practice, for the time being, esports tournaments held in Luxembourg are organized by private companies such as certain esports leagues, videogame editors or associations, and may require admission payments or the subscription to a player card. Players should thus at the very least be considered as consumers benefiting from Luxembourg Consumer law.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

The capacity to contract under Luxembourg law is obtained at the age of 18.

The capacity to contract for minors is granted to parents or other persons with parental responsibility. Such restriction may apply to the participation of minors in esports tournaments, provided that entering into a contract is a prerequisite to the participation in the esports tournaments.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

Criteria of selection of participants need to be objective, transparent, and non-discriminatory.

In the event when the legislator would consider that esports should fall within the scope of the 1977 Law, the esports tournament will be limited to a minimum age (i.e. over 18 years old). In practice, restriction to the participants are fixed by the Terms and Conditions regulating the access to the tournament, for instance, the subscription to an esports league could be required.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

T&Cs should be drafted in accordance with the Luxembourg Consumer Code, if the tournament is not directed to professional players. They should be

drafted in accordance with Articles 122–2 et. Seq. of the Luxembourg Consumer Code which prohibit misleading advertisement, in any case.

In addition, the principles applicable to prize promotions shall apply, being reminded that the legal framework applicable to prize promotions in Luxembourg is currently unclear.

Finally, T&Cs shall, where possible, be drafted so as to avoid the applicability of the 1977 Law, and shall, in any case, comply with data protection and intellectual property laws.



### Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

There currently is no specific law or regulation setting out requirements for the selection of winners and awards of prizes for esports tournaments.

As mentioned above, the legal framework currently applicable to prize promotions is uncertain. However, in practice, some prize promotions operators continue to apply the “old regime” of the 2002 Law, and file the terms of the operation with a bailiff. It is also worth mentioning that under such regime, participation in a draw, whatever the terms and conditions, could not be subject to any financial compensation of any kind whatsoever, nor to any purchase obligation. Moreover, the conditions for the awarding of the prizes were to be transparent for participants.

In any case, general Consumer law and Contract law will apply to the proper selection of winners.



### Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers can currently only enforce contractual provisions set out by the T&Cs of the tournament. However, limitations can apply to actions that can be taken against players without a court order.



### Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

Under the current law, there is no restriction on the prizes than can be awarded. However, anything contrary to public order or the distribution of which is prohibited or regulated (e.g. tobacco and drugs) should not be awarded as prizes.



### Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

For the time being, there is no such difference under Luxembourg law.



### Other local requirements

**Are there any other key local requirements?**

There is no dedicated regime applicable to esports for the moment even though the COSL is debating over its status. As a consequence, a deeper review of the mechanics of any specific esports tournament is necessary (on a case to case basis) to mitigate any difficulties.



### Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

Currently, no such specific timing requirements apply under Luxembourg law.



## Translations

### Are the terms of the esports tournament required to be translated by law?

There is no requirement as such. However, it is generally advisable (at least from a commercial standpoint) to have the terms translated in one of the three official languages of Luxembourg, namely French, German or Luxembourgish.



## Penalties for non-compliance

### What are the penalties for non-compliance?

For the time being, the legal framework applicable to esports in Luxembourg is rather uncertain. However, from a general perspective, Luxembourg law provides for the following sanctions:

- In the case of unlawful operation of games of chance:
  - For individuals: fines from 251EUR to 25,000EUR (approx. USD285 to USD28,400) and/or imprisonment from 8 days to 6 months.
  - For companies: fines from 502EUR to 50,000EUR (approx. USD570 to USD57,000).
  - In the case of having knowingly tolerated games giving rise to excessive stakes or bets on a regular basis in premises accessible to the general public; or having made an unauthorized gaming establishment known by ways of notices, announcements, posters or any other means of publication; or having knowingly received bets or distributed winnings on a regular basis in premises accessible to the general public without prior authorization; or, for the purpose of betting, having sold or offered for sale information on the chances of success of competitors involved in a sporting event:
    - For individuals: fines from 251EUR to 15,000EUR (approx. USD285 to USD17,000) and/or imprisonment from 8 days to 1 month;
    - For companies: fines from 502EUR to 30,000EUR (approx. USD570 to USD34,000).

These penalties can be doubled in the case of:

- repeat offence within five years of a conviction under the same legal provision; or

- the offence being committed against a person under the age of 21.

In any of the above cases, perpetrators may also be sentenced to the loss of some of their civil rights (e.g. right to vote, right to hold a public position, etc.).

- In the case of installation in public places of any cash dispensers, consumer tokens and, in general, any device whose operation is based on skills or chance and which is intended to provide a gain or consumption against some kind of financial compensation:
  - For individuals: fines from 251EUR to 15,000EUR (approx. USD285 to USD17,000) and/or imprisonment from 8 days to 6 months;
  - For companies: fines from 502EUR to 30,000EUR (approx. USD570 to USD34,000).

In the case of prohibited lotteries:

- For organizers, administrators, agents or employees:
  - For individuals: fines from 500EUR to 30,000EUR (approx. USD570 to USD34,000) and/or imprisonment from 8 days to 3 months;
  - For companies: fines from 1,000EUR to 60,000EUR (approx. USD1,100 to USD68,000).

Finally, there is the possibility that the personal data processing aspects of the promotion could breach GDPR, which has maximum fines of up to the higher of:

- EUR20 million (approx. USD22.7 million); or
- 4% of the promoter's worldwide annual revenue.

## Key contacts



### Olivier Reisch

#### Partner

DLA Piper Luxembourg  
T +352 26 29 04 2017  
olivier.reisch@dlapiper.com



### David Alexandre

#### Counsel

DLA Piper Luxembourg  
T +352 26 29 04 2614  
david.alexandre@dlapiper.com

# Macau



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

At present, there is no legal framework in Macau that specifically regulates esports area. As such, the answers provided below are in a general perspective based on the categories identified below.

## With regard to the applicability of gambling laws

### Games of Chance:

Law no. 16/2001 and Administrative Regulation No. 26/2001

The commercial exploitation of gaming is reserved to the Macao SAR and can only be granted to a third parties entity by means of a gaming concession throughout an administrative contract.

### Law no. 8/96/M

This Law regulates illicit gaming, providing criminal sanctions for the illegal offering of gambling and betting activities.

## With regard to the applicability of prize promotion regulations to esports activities

### Decree Law no. 47/98/M

This Law regulates all kinds of lucky draw or similar activities in commercial nature – regardless of their manual or digital nature, and creates licensing requirements for their conduction.

### Law no. 5/2011

Article 1 No.2 prohibits tobacco advertising as well as its promotion and sponsorship of any sports teams.

## With regard to the advertisement of esports related activities

### Law no. 7/89/M

#### (General regime of advertising activity)

Article 8 sets out the prohibition of Macau gambling advertisement.

### Ordinance no. 168/96/M

This Ordinance provides specific regulations on liability insurance in respect of the posting of advertising material.

## With regard to the protection of intellectual property rights as part of esports activities

### Decree Law no. 97/99/M

This Law sets out the intellectual property regime.

### Law no. 5/2012

This Law sets out the copyright regime and related rights.

### Decree Law no. 51/99/M

This Law sets out the rules for commercialization and production of computer programs, phonograms and videograms.

## With regard to the processing of personal data as part of esports activities

Law no.8/2005 (Personal Data Protection)

Law no. 11/2009 (Law on Combating Computer Crime)



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

In principle, there is no extra-territorial effect to local laws.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Macau and there is no dedicated legal or regulatory regime applicable to esports.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification for the usage of video games in esports tournaments, as long as their usage complies with the abovementioned intellectual property regulations.



### Sponsorship of esports tournaments

**Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?**

There is not a set of specific requirements applicable to sponsorship agreements for esports tournaments. That said, Article 8 of the Law no. 7/89/M prohibits any form of direct and indirect advertising related to betting activities, gambling and other types of games with cash winnings. Local tobacco regulations like Article 1 of the Law no. 5/2011 restricts tobacco from providing sponsorship to any sporting events.

Moreover, the sponsorship and services provided by sponsors may result in regulatory and tax issues. Thus, sponsors should carefully consider the relevant implications.



### Consumer Protection – advertising

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

There is no specific regulation in respect of advertising of videogames during esports tournaments. However, pursuant to Articles 7 and 8 of the Law no. 7/89/M, certain types of contents are prohibited in advertisement, such as containing fraud, violence, illegal activities, national or religious symbols, gambling, etc.



### Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

There are no restrictions on prices payable for participation in esports tournaments under Macau law.



### Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

The capacity to contract and therefore to participate in esports tournaments under Macau law is obtained at the age of 18. In case of individuals younger than that age, the capacity to contract for minors is granted to parents or other persons with parental responsibility.



### Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

There are no regulations that would prevent the creation of criteria that would restrict participation in esports tournaments (provided that they are not discriminatory by reason of gender, political affiliation, race, etc.).



### Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

There are no specific requirements for T&Cs of esports tournaments.



### Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

There are no specific legal requirements for the selection of winners and award of prizes.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

The organizer may impose sanctions by enforcing the relevant contractual provisions set out by the tournament T&Cs. Where the conduct in question has a criminal relevance, the organizer may further press charges with the appropriate police authorities in Macau.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

There are no specific or clear regulations on whether the T&Cs are required to be translated into official languages. However, translating the T&Cs into Chinese/English/Portuguese is best practice to avoid misunderstanding between promoters and participants.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

There are no specific restrictions on prizes payable to participants. However, there are regulations prohibiting the award of certain goods as prizes (for example tobacco products).



## Penalties for non-compliance

**What are the penalties for non-compliance?**

The perpetrator is obliged to compensate for damages caused, in case of infringement of the law for unfair practices.

The failure to comply with data protection and privacy legal requirements and formalities may result in civil, criminal and administrative liability. Depending on the conduct, additional sanctions, fines, and ancillary penalties may apply.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

No



## Other local requirements

**Are there any other key local requirements?**

Esports are not currently recognized in Macau as sports, and therefore certain exemptions (e.g. public interest) which are normally applicable to recognized sports will not apply.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

No

## Key contacts



### Scott Thiel

**Partner**

DLA Piper Hong Kong  
T +852 2103 0519  
scott.thiel@dlapiper.com



### Venus Cheung

**Registered Foreign Lawyer**

DLA Piper Hong Kong  
T +852 2103 0572  
venus.cheung@dlapiper.com



### José Leitão

**Partner**

MdME Lawyers  
T +853 2833 3332  
jleitao@mdme.com.mo

Malta



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Gaming Act, Chapter 583 of the Laws of Malta and its subsidiary legislation.

Prevention of Corruption in Sport Act, Chapter 593 of the Laws of Malta.

## With regard to the applicability of prize promotion regulations to esports activities

Consumer Affairs Act, Chapter 378 of the Laws of Malta and its subsidiary legislation.

Gaming Act, Chapter 583 of the Laws of Malta and its subsidiary legislation.

Sports Act, Chapter 455 of the Laws of Malta and its subsidiary legislation.

## With regard to the advertisement of esports related activities

Gaming Commercial Communication Regulations (Subsidiary Legislation 583.09) and the Malta Gaming Authority ('MGA') Commercial Communications Committee Guidelines.

Consumer Affairs Act (Chapter 378 of the Laws of Malta).

## With regard to the protection of intellectual property rights as part of esports activities

Copyright Act (Chapter 415 of the Laws of Malta).

Patents and Designs Act (Chapter 417 of the Laws of Malta).

Trademarks Act (Chapter 597 of the Laws of Malta).

Trade Secrets Act (Chapter 589 of the Laws of Malta).

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

Data Protection Act Chapter 586 of the Laws of Malta.



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

In terms of the Gaming Act, no person shall provide or carry out a gaming service from Malta or to any person in Malta except when in possession of a valid license and no person shall offer a licensable game unless such game is approved or otherwise recognized by the MGA. Therefore, if the entities operating abroad intends to provide a gaming service to any person in Malta, they shall comply with Maltese laws. In terms of the Gaming Act, a "gaming service" means making a game available for participation by players, whether directly or indirectly, and whether alone or with others, as an economic activity. A game includes both games of skill and games of chance. However, only controlled skill games require a valid licence from the MGA. To date, only fantasy sports is included in the list of controlled skill games.

Esports events that are sponsored by gaming operators or in which gaming services are being provided or promoted shall ensure that the operator is in possession of an authorization from the MGA or otherwise apply for a Recognition Notice which allows suppliers and operators established in Malta to operate under a license issued by a regulator in another member state of the EU or EEA, or a third country which is deemed by the MGA to offer safeguards largely equivalent to those under Maltese law. Once a Recognition Notice is issued by the MGA, that foreign license is given the same legal effect as an authorization issued by the MGA.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

The Sports Act (Chapter 455 of the Laws of Malta) defines 'sport' as a physical or mental activity which, through casual or organized participation or through training activities, aims at expressing or improving

physical and mental well-being, forming social relationships or obtaining results in competition at all levels and which is administered by a set of rules or customers and is often undertaken competitively. This definition is wide enough to include esports. However, to date, the relevant sports authorities have not yet formally approved esports as a sports.

However, the MGA considers sporting events as comprising of a sport as defined in Chapter 455 of the Laws of Malta which is administered by a set of rules and which is often undertaken competitively. The MGA has clarified that the above definition of 'sports' encompasses also esports.<sup>1</sup>



### Technical requirements of esports tournaments

**Do videogames need any certification to be used as part of esports tournaments?**

There is no dedicated certification for the usage of video games in esports tournaments, apart from the certifications necessary for their sale to the public, such as those provided by the Pan-European Game Information (PEGI) rating system.



### Sponsorship of esports tournaments

**Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?**

Esports events that are sponsored by gaming operators or in which gaming services are being provided or promoted shall ensure that the operator is in possession of an authorization from the MGA or otherwise apply for a Recognition Notice, as described in Section 2 above. Furthermore, any promotion shall be made in compliance with the Commercial Communications Regulations (Subsidiary Legislation 583.09) and the MGA Commercial Communications Committee Guidelines which establish the promotion regulations applicable both to land-based and remote gaming sectors. The Regulation and the Guidelines specifically aim at protecting minors and vulnerable people from harm or exploitation and provide practical guidance to any

person offering licensable game/s and to persons which collaborate in any way or provide any service including any marketing or promotional service.

The Regulations set out a number of limitations in respect of the distribution of commercial communications to ensure that any advertising made is socially responsible. In brief, commercial communications must not suggest that gaming is an alternative form of employment, or provide false or untruthful information about the chances of winning or else portray gaming as an indispensable aspect of life.



### Consumer Protection – advertising

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

No specific regulation on this matter, unless there is any promotion of gaming services during the tournament.



### Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

No specific regulations on this matter, unless a gaming service is being provided.



### Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

In terms of the Gaming Act, a person who is under the age of eighteen years shall be considered to be a minor and no person shall offer, permit, entice, cause, invite or induce a minor to participate in a gambling activity. Thus, in respect of esports events that are sponsored by gaming operators or in which gaming services are being provided or promoted, organisers shall ensure that it has internal procedures and the respective esports tournament terms and conditions specifically prohibit minors from registering and playing.

<sup>1</sup> Section 3.1 of the MGA Consultation Paper on Suspicious Betting Reporting Requirements & Other Sports Integrity Matters', <https://www.mga.org.mt/wp-content/uploads/Consultation-Paper-on-the-Suspicious-Betting-Reporting-Requirements-Other-Sports-Integrity-Matters-05.2020.pdf>

Conversely, in terms of the Maltese Civil Code (Chapter 16 of the Laws of Malta) and the Maltese Commercial Code (Chapter 13 of the Laws of Malta) a minor who has attained the age of sixteen may enter into contracts. Therefore, any person above the age of sixteen may be allowed to participate in an esports tournament given that the latter is deemed to be of legal age capable of understanding and accept the respective terms and conditions of the esports tournament. For this reason, the T&Cs of the esports tournament shall be written in plain and intelligible language which can be understood by the consumer to whom such terms are directed.



## Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

Restrictions may be imposed as to who can participate in the esports tournament provided that the eligibility requirements for participation are clearly delineated in the respective terms and conditions of the tournament and provided also that such restrictions are reasonable and not discriminatory.

As explained in point 8 above, if the esports tournament is organized as part of a gambling activity, then only persons who are above the age of eighteen years may participate. In respect of esports tournaments which fall outside the scope of gambling activities, the restriction shall apply only in respect of players below the age of sixteen.



## Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

The T&Cs of esports tournaments should not provide misleading advertising rules, if the tournament is addressed to professional players, and should not be unfair in terms of the Consumer Affairs Act namely, the T&Cs should not limit in any manner a consumer's legal right or otherwise be to the consumer's detriment and they should be compatible with the requirements of good faith. T&Cs which include unfair terms shall not be binding on the consumer. Moreover, the respective T&Cs cannot omit or hide material information, and any information provided therein must be presented in a manner which is clear, intelligible, unambiguous and easily comprehensible.

Additionally, the mechanic of the esports tournament shall be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations, intellectual property laws and consumer protection law.



## Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

No specific regulations on this matter, unless a gaming service is being provided.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Match-fixing in Malta is defined in the Prevention of Corruption in Sport Act (*Chapter 593 of the Laws of Malta*) (the 'Act') as "manipulation of a sporting event". A manipulation of a sporting event shall mean an act or omission by virtue of which any person makes an international arrangement, aiming at or successfully accomplishing:

- the deliberate alteration of the outcome of any sporting event; Public 15
- the deliberate alteration of any of the aspects of a sporting event and the unpredictable nature of the sporting event, irrespective of whether such alteration affects the final outcome of the sporting event and whether such alteration, if any, is achieved as a direct or indirect consequence of the act or omission;
- the provision of inside information to third parties in a manner that assists or facilitates the commission of an offence against this Act;
- the actual acquisition of inside information with the intent of providing such information to third parties; or
- the aiding, abetting, encouragement and/or inducement in any other way, of third parties to commit any one or more of the aforementioned acts, which may result in an undue advantage or gain for that person or for others.

This Act states that '[a]ny person who has knowledge, whether verbally, in writing or otherwise that an offence has been committed[...]shall communicate such knowledge to the Commissioner of Police' within fourteen days from the date on which such person became aware thereof. Failure by such person to communicate such knowledge to the Commissioner of Police will result in that person being guilty of an offence.

Esports tournament organizers cannot themselves impose sanctions against players involved in the manipulation of a sporting event, this falls within the remit of the Maltese Courts. However, they can enforce contractual provisions set out by the terms and conditions of the tournament.

The Maltese Criminal Court may sanction a player who has engaged in the manipulation of a sporting event to imprisonment for a period of not more than three years and to a fine (multa) from five thousand euro (EUR5,000) to thirty thousand euro (EUR30,000) or to both such fine and imprisonment



### Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

No restrictions, as long as what is provided is not a gaming service.



### Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

No difference in terms of Maltese law.



### Other local requirements

**Are there any other key local requirements?**

The MGA has recently published a Consultation Paper on Suspicious Betting Reporting Requirements and other Sports Integrity Measures. Through this Consultation Paper, the MGA's has shown its intention to implement a set of suspicious betting reporting requirements which will oblige B2C licensees offering betting on sport events to inform the MGA of any instance of suspicious betting. Additionally, B2C licensees will also be required to inform the MGA of any circumstances which may lead to one or more bets being voided owing to suspicion of manipulation of the event to which they relate. In this Consultation Paper, the MGA clarified that the definition of 'Sports' in the Sports Act includes esports.



### Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

Not applicable.



### Translations

**Are the terms of the esports tournament required to be translated by law?**

The official languages of Malta are English and Maltese. Therefore, under consumer regulations, users shall be provided with terms and conditions in at least one of the two official languages.



## Penalties for non-compliance

### What are the penalties for non-compliance?

The penalties provided in the Gaming Compliance and Enforcement Regulations (Subsidiary Legislation 583.06) shall apply in respect of esports tournaments wherein a gaming service is provided.

As explained in point 2 above, the provision of a gaming service without the necessary authorisation is forbidden. That being said, the performance of such activity, or the promoting, aiding, abetting or otherwise facilitating the provision of such service in or from Malta will constitute an offence against Gaming Act. The Third Schedule to the Gaming Act lists the provision of a gaming service without the necessary license as a criminal offence.

A person found liable of having committed a criminal offence will be liable to a fine (multa) of less than ten thousand euro (EUR10,000) and not more than five hundred thousand euro (EUR500,000) or to imprisonment for a term of not more than (5) five years, or to both such fine and imprisonment. Where the person found liable is a company or business undertaking, any person **whether president, director, manager or any other officer exercising an executive function and who is vested with judicial legal representation thereof** shall be liable in solidum with the said company or business undertaking.

**Alternatively, the MGA may offer the offender the possibility of entering into a regulatory settlement in lieu of criminal proceedings, unless the MGA is reasonably satisfied that criminal proceedings are more appropriate. Upon entering into the regulatory settlement, the offender's criminal liability will be extinguished.**

Other enforcement measures which the MGA may take are the following:

- An order directing an authorized person to do, or to refrain from doing something or other correct its conduct and or operations; and/or

- A warning directing an authorized person to do or refrain from doing something in the future; and/or
- Adding, removing or amending conditions attached to the MGA authorization; and/or
- In the case of a breach which is not an offence against the Gaming Act, impose an administrative penalty; and/or
- In the case of a breach which is an offence against the Gaming Act, file a report to the Executive Police for the commencement of criminal proceedings; and/or
- Suspending or cancelling the license.

The above enforcement measures may be exercised by the MGA solely following the conclusion of a compliance review and, or a formal investigation unless otherwise deemed appropriate by the MGA in the interest of players or on grounds of public policy, public security or the safeguarding of the reputation of Malta.

Furthermore, esports tournament organizers are expected to adhere to the provisions provided in the Consumer Affairs Act and failure to abide by any of the provisions shall result in a fine (multa) of not less than four hundred and seventy euro (EUR470) and not more than forty-seven thousand euro (EUR47,000).

### Key contacts

#### Joseph F.Borg

##### Partner

WH Partners

T + 356 2092 5100

joseph.borg@whpartners.eu

#### Erika Micallef

##### Junior Associate

T + 356 2092 5100

erika.micallef@whpartners.eu

# Mexico



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

The Federal Law of Games and Drawings ("Ley Federal de Juegos y Sorteos") ("LFJS") providing that all gambling games and games of chance are prohibited in Mexico, except when it comes to sports, in all its forms.

The Rules Federal Law of Games and Drawings ("Reglamento de la Ley Federal de Juegos y Sorteos") ("RLFJS").

## With regard to the applicability of prize promotion regulations to esports activities

The General Law of Physical Culture and Sport ("Ley General de Cultura Física y Deporte") ("LGCFD").

The Physical Culture and Sport Laws of the States of the Mexican Republic ("Ley de Cultura Física y Deporte").

## With regard to the advertisement of esports related activities

Federal Law of Consumer Protection ("Ley Federal de Protección al Consumidor")

The Federal Anti-Trust Law ("Ley Federal de Competencia Económica")

Rules of the Federal Health Care Law related to Sanitary Control of Advertisement ("Reglamento de la Ley Federal de Salud en Materia de Control Sanitario de la Publicidad")

## With regard to the protection of intellectual property rights as part of esports activities

The Law of the Industrial Property ("Ley de la Propiedad Industrial") ("LPI").

## With regard to the processing of personal data as part of esports activities

The Federal Law of Protection of Personal Data possessed by Individuals ("Ley Federal de Protección de Datos Personales en Posesión de los Particulares").

The Rules of the Federal Law of Protection of Personal Data possessed by Individuals ("Reglamento de la Ley Federal de Protección de Datos Personales en Posesión de los Particulares").

The General Law of Protection of Personal Data possessed by Individuals ("Ley General de Protección de Datos Personales en Posesión de Regulated Subjects").

Personal Data Protection Laws of the States of the Mexican Republic.



### Extra-territoriality

Are national laws enforceable against entities operating abroad?

The jurisdictional reach of Mexican Laws only extends to the Mexican Republic.



### Recognition of esports as a sport

Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not regulated in Mexico, however, on February 15, 2020, the Mexican esports Federation ("Federación Mexicana de Esports") obtained the Unique Registry of Sports granted by Mexico's National Commission for Physical Culture and Sport Conade ("Comision Nacional de Cultura Física y Deporte), which recognizes electronic sports as a professional sport in the country. Relevant legislation is still pending of approval and issuance by the Mexican Congress, but is expected in the near future.



### Technical requirements of esports tournaments

Do videogames need any certification to be used as part of esports tournaments?

Since esports are not regulated in Mexico, there is no regulation that states such requirement. However, please note that videogames may be subject to comply with certain provisions contained in Mexican Official Standards ("Nomas Oficiales Mexicanas") before their commercialization, in which we mainly find labelling requirements, among others.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

In Mexico, the sponsorship (“patrocinio publicitario”) is not regulated under Civil or Commercial regulations, and shall be governed under a private agreement entered by the parties.

- The information must not be exaggerated. Therefore it shall be equitable and consequently, it is recommended that said information is duly supported.

It is important to point out that the aforementioned provisions are the general framework applicable to products advertisement in Mexico. However, since esports are not regulated in Mexico, there is not an specific regulation applicable to the advertising of videogames during esports tournaments.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

In accordance with the provisions established in article 32 of the Federal Law of Consumer Protection, the information or advertisement of products or services (or any comparison thereof) communicated by any mean shall be truthful, verifiable, clear and not inclusive of any text, dialogue, sound, image, mark or other description that are may be misleading, false or abusive.

For the purposes of the Federal Law of Consumer Protection, it shall be deemed that the information is misleading or abusing when the characteristics or information related to any given product or service, regardless they are true or not, induce to error or confusion due to the inaccurate, false, exaggerated or misleading way they are displayed.

From the legal provisions referred to above, it is possible to conclude that advertisement (claims) must comply with the following requirements:

- The information must not be misleading, therefore it must be objective and professional, considering one or more essential, verifiable, important or representative characteristics of the products or services. If any comparison between products is made, it must be displayed from an expert’s point of view with the understanding that such comparison must be displayed in a simple manner in order to be easily received and understood by the consumers.
- The information must not be false since the purpose of advertisement is to accurately inform the consumers, rather than to mislead or confuse them.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Since esports are not regulated in Mexico, organizers of relevant tournaments may set out internal rules in connection with the price to be paid in order to be able to participate. Thereupon, this will depend on the potential player’s will.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

There are no restrictions for individuals over 18 years old. However, in the case of minors or individuals with a disability, the permission and consent of the parents, tutor, or the person exercising parental authority, will be required.

Likewise, in accordance to the Mexican Data Protection Laws, a person can consent to sharing its personal information once he/she is 18 years old. Otherwise, consent must be given by a parent or tutor.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

It is possible to establish restrictions to the participation as long as such restrictions do not actualize any event of discrimination based on ethnic or national origin,

gender, age (with exceptions as for content prohibited for minors), disabilities, social status, health conditions, religion, opinions, preferences sexual, marital status or any other that threatens human dignity.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

The contracting of esports players will depend on the relationship that is intended to be set out with relevant players. This may be carried either through a services agreement or under a labor relationship, which terms and conditions shall be in accordance with the provisions set forth in the Federal Labor Law. In general terms, the purpose of said Law is to defend the principals of social justice in labor relations of the employee and the employer.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

Tournament organizers are free to set out the rules and requirements applicable in each event for these purposes. However, such regulations cannot be contrary to Law.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Relevant organizers may anticipate that any player involved in these kinds of conducts shall be subject to disqualification of the tournament. However, the players cannot be sanctioned otherwise by entities other than competent governmental authorities, as applicable.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

Since esports are not regulated in Mexico, there are no such restrictions.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

Since esports are not regulated in Mexico, there is no regulation on this matter.



## Other local requirements

### Are there any other key local requirements?

In the event that personal data is collected from participants, it is strictly necessary to consider the provisions contained in the Mexican legal framework related thereto (jointly, the "Data Privacy Law"):

Mexican Federal Law for the Protection of Personal Data in Possession of Private Parties; the Regulation of the Mexican Federal Law for the Protection of Personal Data in Possession of Private Parties; Guidelines of the Privacy Notice; and Recommendations on Personal Data Security.

In general terms, said provisions consist on which the Controller (esports) has the obligation to notify the Data Subject (the participant) about the Processing of its personal data, as well as to obtain the consent of the Data Subject before processing the personal data. This obligation is carried out through a privacy notice, which must comply with the requirements set forth in the Data Privacy Law.

Processing on personal data considered as "sensitive" is subject to additional requirements.

Storage of personal data is subject to several requirements; as a general rule, once the personal data is no longer necessary for fulfilling the purposes set forth under the relevant privacy notice, they must be cancelled.

Subject to the exceptions set forth in the Federal Data Privacy Law, when the Controller intends to transfer the personal data to national or foreign third-parties, other than the processor, the Controller must provide to said third-parties the privacy notice and the purposes to which the Data Subject(s) consented the processing of their personal data. The Personal Data will be processed in accordance with the terms of the privacy notice, which will contain a clause indicating whether the data subject accepts or not the transfer; similarly, the receiving third-party will assume the same obligations as the Controller that transferred the personal data. Transfers must be notified to the data subject in the privacy notice. International transfers of personal data will be possible when the recipient of personal data assumes the same obligations as the Controller who transferred the personal data.

Pursuant to the Data Privacy Law, the sanctions that may be imposed by the Institute vary from a warning to a penalty fee from 100 to 320,000 UMA (Unit of Measurement and Updating). In the event that the infractions persist, an additional fine will be imposed that will go from 100 to 320,000 UMA.

In the case of infractions committed in the processing of sensitive personal data, penalties may be increased up to twice the amounts established above.

The above-mentioned sanctions are applicable without prejudice to the resulting civil and criminal liabilities.

Additionally, the Federal Copyright Law, provides that, effective technological protective measures and information on rights management may be implemented for the protection of copyrights and related rights.

Likewise, a fine from one thousand up to ten thousand times the daily value of the UMA (approximately from MX\$86,880.00 up to MX\$868,800.00 pesos) will be imposed, on those who evade an effective protective technological measure that controls the access to a work, artistic performance, or phonogram protected by the Federal Copyright Law.

Finally, the Federal Penal Code includes crimes related to the the unduly use and elusionunduly using and eluding of the above-mentioned protective technological measures.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

Since esports are not regulated in Mexico, there is no such timing requirement.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

Since esports are not regulated in Mexico, there is no regulation that states such requirement. Notwithstanding the above, (i) if a relevant esports tournament is intended for Mexican participants and (ii) considering rules for similar practices and the principle of non-discrimination, we assume that the tournament shall, at least, give participants the option of selecting Spanish as default language.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

Since esports are not regulated in Mexico, there is no regulation stating specific penalties. However, please note that relevant penalties may arise in case that any participant submits a claim before the Consumer's Protection Agency ("Procuraduría Federal del Consumidor" (PROFECO)) and that is supported by the latter.

## Key contact



**Jorge A. Benejam**

**Partner**

DLA Piper Gallastegui y Lozano

T +52 55 5261 1892

jorge.benejam@dlapiper.com

# Netherlands



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

The Dutch Betting and Gaming Act (Wet op de Kansspelen) ("BGA").

## With regard to the applicability of prize promotion regulations to esports activities

Code of Conduct for Promotional Games of Chance. (Gedragscode Promotionele Kansspelen) ("Promotional Code of Conduct")

Advertising Code for Games of Chance, offered by Licensees, by virtue of the Games of Chance Act (Reclamecode voor kansspelen die worden aangeboden door vergunninghouders ingevolge de Wet op de Kansspelen) ("Advertising Code for Games of Chance")

General Data Protection Regulation (Algemene Verordening Gegevensbescherming) ("GDPR")

GDPR Implementation Act (Uitvoeringswet Algemene Verordening Gegevensbescherming) ("UAVG")

Telecommunications Act (Telecommunicatiewet) ("TA")

## With regard to the advertisement of esports related activities

Dutch Advertising Code (Nederlandse Reclame Code) ("RCC")

Advertising Code for Games of Chance, offered by Licensees, by virtue of the Games of Chance Act (Reclamecode voor kansspelen die worden aangeboden door vergunninghouders ingevolge de Wet op de Kansspelen) ("Advertising Code for Games of Chance")

Dutch Civil Code, sections 6:194–6:196 (Burgerlijk Wetboek) ("DCC")

## With regard to the protection of intellectual property rights as part of esports activities

Auteurswet 1912 (the Dutch Copyright Act) ("Aw")

Benelux Convention on Intellectual Property ("BCIP")

European Union Trademark Regulation ("EUTMR")

European Patent Convention ("EPC")

Dutch Patent Act (Rijksoctrooiwet 1994) ("DPA")

## With regard to the processing of personal data as part of esports activities

GDPR

UAVG



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Yes: in general, entities that operate from abroad must comply with Dutch law if they are active on the Dutch market and especially when targeting Dutch consumers.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in the Netherlands and there is no dedicated legal or regulatory regime applicable to esports.

Some authors argue that esports does legally qualify as a sport based on the commentary to Article 17 of the OECD Model Tax Convention on Income and on Capital, and on tax case law of the CJEU 26 October 2017, C-90/16 (*The English Bridge Union*), [V-N 2017/54.14.](#), but that view is not yet broadly shared.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

If an esports tournament qualifies as a game of chance, it is currently prohibited to organize such tournament. Games of chance are currently illegal in the Netherlands

(except a license has been granted; however there are only a few licensees). It is expected that online games of chance will be legal as of 1 January 2021, although this date is subject to change.

If an esports tournament is to be qualified as a prize promotion, the criteria laid down in the Promotional Code of Conduct must be met, to prevent the tournament from qualifying as an illegal game of chance.

If the esports tournament doesn't qualify as a game of chance, there are no dedicated certification requirements for such tournament.

However, Dutch criminal law prohibits the sale, offering or viewing of videogames to children under 16 if such games are rated as not suitable for children under the age of 16 (i.e. PEGI 16). The sanction upon violation of this rule is a prison sentence of a maximum of one year or a fine of up to EUR20,750.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

None other than general Dutch contract law. The Dutch Olympic Committee/Sports Federation, provides standardized sponsorship agreements with particular requirements that can be used when organizing a sports event. Indicators that esports have to be regarded as a sport (and that these sponsorship agreements can be used) are, for example, that fact that the International Olympic Committee accepted esports to be added as an official sport in the 2022 Asian Games.

However, if an esports tournament qualifies as a game of chance, it is currently prohibited to promote such tournament. Games of chance are currently illegal in the Netherlands (except for a limited amount of exceptions). It is expected that online games of chance will be legal as of 1 January 2021, although this date is subject to change.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

There are no specific regulations for the advertising of videogames during esports tournaments, other than the general Dutch Regulation on Advertising (“Nederlandse Reclame Code”). This general regulation could impact the advertising of videogames during esports tournaments if the advertising does not comply with the rules set out in this code.

These rules are, for example, that advertising cannot be in violation, conflict or contrary with the law, the truth, moral decency, public interest and public health.<sup>33</sup> Furthermore, advertising cannot adhere to fear or superstition and always has to be recognizable as advertising as such.<sup>34</sup> This final aspect could be of particular importance when advertising a videogame during an esports tournament. Because visual and aural overlay of the gaming competition on one side and advertisement of videogames on the other side is imaginable during esports tournaments, visitors should possibly be made clearly aware by the organization when they are viewing gameplay of the tournament or whether they are viewing an ad. Finally, advertising cannot be misleading (e.g. a false, incomplete or unclear proposition).<sup>35</sup> For example when a videogame is being advertised during the event to be sold during the event, the consumer must be made aware of all relevant aspects of its envisaged purchase, such as price and any other relevant information.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Assuming that the specific esports tournament would not qualify as a game of chance or prize promotion, this should not be an issue. Consequently, esports

<sup>33</sup> Article 2 – 4 Nederlandse Reclame Code.

<sup>34</sup> Article 5 and 6 Nederlandse Reclame Code.

<sup>35</sup> Article 8 Nederlandse Reclame Code.

tournaments should therefore be structured in a way that prevents them from qualifying as either a game of chance or a prize promotion.

If an esports tournament qualifies as a prize promotion, participants are not allowed to be charged more than the communication costs for participation, amounting to EUR0.45. Exceeding this amount will lead to the prize promotion to qualify as an illegal game of chance.

 **Participation of minors in esports tournaments**

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

The ability to enter into legally binding agreements without parental consent under Dutch law, and thus to participate in esports tournaments, is 18 years. However, with regard to minors of 16 years and older, there is a legal assumption that counterparties can assume parental consent, provided that the legal act being entered into is considered a normal act for a person of 16 years or older.

 **Selection of participants**

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

No specific legislation limits the possibility to restrict who can participate in an esports tournament.

However, if an esports tournament can be considered a prize promotion, parental consent is required for participation of minors.

 **Contracting esports players**

**Are there particular requirements for t&cs of esports tournaments?**

In general, Dutch T&Cs regime is protective in favour of consumers in case of B2C relationships. Should players qualify as consumers, such protective legislation applies. However, it could be argued that concluding agreements with professional esports players does

not qualify as a B2C-relationship. Should an esports tournament qualify as a prize promotion, additional rules are applicable as to what information is to be included in the T&Cs.

 **Selection of winners**

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

If an esports tournament does not qualify as a prize promotion or other game of chance, no rules other than general contract and (if applicable) consumer laws apply.

If an esports tournament qualifies as a prize promotion, the selection of winners and award of prizes should take place in an impartial manner (e.g., by a civil-law notary, bailiff, a person without any interest in the tournament or through a randomized instrument such as a computer).

 **Sanctions against players**

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

This can be achieved by including such sanctions in the T&Cs of the esports tournament. However, the scope of these sanctions may be limited to those sanctions that are enforceable without a court order.

Additionally, match-fixing, corruption or illegal gambling during a tournament might qualify as criminal offences. Such offences can be prosecuted by the public prosecutor.

 **Prizes of esports tournaments**

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

Only if an esports tournament qualifies as a prize promotion. In such case, the total value of the prizes may not exceed an amount of EUR100,000.

In other scenarios, there are no restrictions.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

If an esports tournament qualifies as a game of chance, it is currently prohibited to organize such tournament. Games of chance are currently illegal in the Netherlands (except a license has been granted; however there are only a few licensees). It is expected that online games of chance will be legal as of 1 January 2021, although this date is subject to change.



## Other local requirements

### Are there any other key local requirements?

Dutch law does not provide for any dedicated regimes applicable to esports.

If an esports Tournament would qualify as a land-based game of chance, strict licensing requirements apply.

If the esports Tournament qualifies as a prize promotion, the Promotional Code of Conduct states that the total value of prizes to be won cannot exceed the amount of EUR100,000. Such tournament may be organized once per year per company, brand or product.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

No



## Translations

### Are the terms of the esports tournament required to be translated by law?

Under Dutch law, no obligation exists to have these terms translated to Dutch. However, under Dutch consumer law, terms and conditions shall be construed in clear and comprehensible language. To stay on the safe side, we recommend to translate the terms to Dutch, to prevent any discussion about whether the terms are “clear and comprehensible”.

This does not apply in non B2C-relations, e.g. when professional esports players sign an agreement with an esports operator.



## Penalties for non-compliance

### What are the penalties for non-compliance?

The Dutch Gambling Authority (Kansspelautoriteit, “KSA”) can impose administrative fines of up to EUR830,000 or 10% of the annual turnover of the year preceding the year in which the violation was committed for offering illegal games of chance. When the violation is considered an economic offence, the violation may be punished by imprisonment (with a maximum of two years).

Furthermore, the Advertising Code Committee may issue a “recommendation” for violations of the RCC or the Advertising Code for Games of Chance, which means that an esports tournament organizer that is in violation is recommended to discontinue the promotion in the form in which it is currently being or has been advertised.

Finally, there is the possibility that the personal data processing aspects of an esports tournament could breach GDPR, which has maximum fines of up to EUR20 million or 4% of the organizers global annual revenue.

## Key contact



### Richard van Schaik Partner

DLA Piper Nederland N.V.

T +31 205 419 828

richard.vanschaik@dlapiper.com

Poland



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Gambling Act of 19 November 2009

Sport Act of 25 June 2010

## With regard to the applicability of prize promotion regulations to esports activities

The Civil Code of 23 April 1964

Gambling Act of 19 November 2009

Act of 30 May 2014 on Consumer Rights

## With regard to the advertisement of esports related activities

Act of 16 April 1993 on Fair Trading

Act of 23 August 2007 on Combating Unfair Commercial Practices

Broadcasting Act of 29 December 1992

Press Law of 26 January 1984

Law on Land Planning of 27 March 2003

Act of 21 March 1985 on Public Roads

Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism

Act of 9 November 1995 on Protection From the Negative Consequences of Tobacco and Tobacco Products Use

## With regard to the protection of intellectual property rights as part of esports activities

Act of 4 February 1994 on Copyright and Related Rights

Industrial Property Law of 30 June 2000

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR")

Act of 10 May 2018 on Personal Data Protection

## With regard to application of Polish law to foreign entities' esports activities

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

Private International Law of 4 February 2011

Act of 18 July 2002 on Electronically Supplied Services

Act of 7 October 1999 on Polish Language

## With regard to the security of events organized in connection with esports activities

Act of 20 March 2009 on Security of Mass Events



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

As regards contractual obligations between an entity operating abroad and Polish players, Rome I Regulation provisions will apply. If a player is a professional (plays in a professional team for a living), a contract between this player and an esports entity operating abroad is governed by the law chosen by the parties. If no law is chosen, the law governing the contracts depends on the circumstances, but in general the contract should be governed by the law of the country where the esports entity has its habitual residence.

However, if a contract (that includes Terms and Conditions of a tournament) is concluded between an esports entity and a player who is not a professional (a consumer) and that entity directs its activities to Poland (or to several countries including Poland), by default that contract will be governed by the Polish law. Under the circumstances specified above the parties may nevertheless choose the law applicable to a contract (for example the law of the country where the entity operates), however, the consumer cannot be deprived of protection afforded to him by Polish consumer law (i.e. Polish consumer law still applies).

The comments above do not apply to supplying services by electronic means.

If the esports entity's activity consists of supplying services by electronic means (organizing online tournaments, online coaching, selling merchandise on its website etc.), it is governed by the law of an EU member state or EFTA country on territory of which this entity's place of residence or registered office is located. However, in case of contracts entered into by players who are consumers, these players cannot be deprived of protection afforded to them by Polish consumer law.

Regarding supplying services by electronic means, Polish law will also apply under other specific circumstances, such as if entities' services are qualified as gambling under Polish law (e.g. betting on esports teams) or if an entity plans to send commercial information to consumers in Poland via electronic mail (a consent is required).



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

Yes, Article 2 sec. 1a of the Sport Act establishes that esports can fall under the legal category of sports. Since the amendment made in 2017 to the Sport Act, all competitions based on intellectual activity aimed to achieve a sports score are also considered as a sport. Therefore, general regulations of the Sport Act may be applicable to esports.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification for the usage of video games in esports tournaments.

However, if esports tournament was subject to gambling law regulations, a permit would be necessary. While there is no case law regarding relation between gambling and video games, in theory some video games in which the outcome of a game relies on an element of chance (e.g. digital card games) could be qualified as a game of chance under Polish gambling law. In this case organization of a tournament would require obtaining a permit.

It is important to point out that, regardless of legal obligations stipulated by Polish law (or lack thereof), most video game licences require that the video game's publisher/producer gives their consent so that a tournament can be organized. Organization of a tournament without such consent may result in legal claims.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements applicable to sponsorship agreements for esports tournaments, however general civil law provisions as well as general provisions regarding advertising and sponsorship apply.

Esports tournaments can be sponsored by producers and distributors of alcoholic beverages, although it is forbidden to inform the public about such sponsorship if the sponsor produces or distributes alcoholic beverages which have over 18% alcohol by volume. Information about such sponsorship can be distributed in a limited scope (only by certain means) in case of sponsors producing or distributing alcoholic beverages which have between 8% and 18% alcohol by volume. No restrictions

apply to informing about a sponsorship by a producer or distributor of alcoholic beverages which have below 8% alcohol by volume (i.e. most beer brands).

Esports tournaments cannot be sponsored by a producer or importer of tobacco products or other linked products.

Esports tournaments can only be sponsored by betting companies which operate legally in Poland, i.e. they received a specific permit in Poland.

Certain obligations have to be met regarding provision of information about the sponsorship in specific media such as television, radio, press and outdoor advertising.

If esports tournament would be directly connected with gambling, further limitations to the advertising, promotion and marketing of gambling games would be applicable.



## Consumer Protection – advertising

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

There is no specific regulation applicable to the advertising of videogames during esports tournaments however, general legal provisions concerning advertisements apply.

An esports tournament may be qualified as a game of chance (gambling) in some circumstances, thus, in line with the relevant gambling regulations, the right to display an advertisement might be limited or in some cases prohibited.

Under Act on Fair trading some types of advertisements are prohibited, e.g. advertising that appeals to consumers' emotions by causing fear or drawing on the superstitions or credulity of children.

Additionally, product placement is generally acceptable in sports and entertainment broadcasts, provided that relevant notices and disclaimers are made, with the exception of broadcasts aimed at children where it is prohibited.



## Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

Yes. A player accepting the Terms and Conditions of the tournament would mean that a contract is concluded between this player and the organizer, thus general rules of the Civil Code regarding contracts would apply to admission fees.



## Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

There is no specific legal regime applicable to esports tournaments. In general, participants playing in professional teams who are over 18 years old can be hired on the basis of a contract of employment or a civil-law contract. In reference to underage participants, the rules of the Civil Code, as well as the Labour Code, should apply. It means that a minor may be employed only under certain conditions stated by law. However, if the game is considered as gambling, minors are not allowed to participate.

Additionally, other rules with reference to admission fee should apply. It is important to remember about players' legal capacity under Civil Code – in practice players below 13 years old could only pay small admission fees and all players below 18 would have to obtain their legal guardian's consent to participate in a tournament with high admission fees/substantial rewards.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

In general, criteria of selection of participants need to be objective, transparent, and non-discriminatory to avoid legal claims on the basis of an infringement of personality rights. These criteria should be stipulated in the tournament's Terms and Conditions.

In some circumstances it is possible to only allow players above certain age to participate in a tournament. The nature of a game (PEGI rating might be an indication in this case), admission fee (see above), nature of the prize pool (amount of money, type of reward) and other factors have to be taken into consideration. Also, it is advised to only allow players who do not have any serious health problems which could result in an injury or death in connection with the games played (e.g. epilepsy).

Organizer of an offline tournament is responsible for the security of the event (in general he is responsible on the basis of Civil Code and in some instances he has to meet certain obligations, in particular if the tournament is qualified as a mass event under the Act on Security of Mass Events), thus players who pose a threat to others should not be allowed to participate in the tournament. In particular, players (and participants) who have dangerous items on them (guns, knives, explosives) or any substances which could affect their mental and/or physical state (alcohol, drugs, psychotropic substances) should not be allowed on the premises of the event unless they hand those items in.

If a tournament is qualified as a game of chance (gambling), only players above 18 years old are allowed to participate.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

In general, Terms and Conditions of a tournament are considered to be a contract between the organizer and a player under Polish law, therefore organizer may determine the contract at his own discretion, provided that its content or purpose do not prejudice the nature of the contract, law or the principles of community coexistence.

What is more, if the tournament is directed at consumers, Polish consumer law applies. As indicated above, specific provisions relating to event's security should also be included.

Data protection regulations (specifically General Data Protection Regulation and Polish Act on Personal Data Protection, for example information obligations towards the players) and intellectual property regulations (Act on Copyright and Related Rights and Industrial Property Law e.g. regarding recordings of the tournament) have to be taken into consideration as well.

If feasible, Terms and Conditions should be drafted in a manner which eliminates any elements of chance which could arise during competition so that there is no possibility of qualifying the tournament as a game of chance under Gambling Act. If a tournament is qualified as a game of chance (gambling), very strict and specific requirements apply to the contents of Terms and Conditions of a tournament.



## Selection of winners

Are there any requirements for the selection of winners and award of prizes for esports tournaments?

There are no particular requirements for the selection of winners. General contract and consumer law rules apply, meaning that the selection of winners has to be in line with the rules stipulated in tournament's Terms and Conditions.



## Sanctions against players

Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can only enforce contractual provisions set out by the Terms and Conditions of the tournament. However, some actions can be taken against players only on a basis of a court order.



## Prizes of esports tournaments

Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There are no particular restrictions on the type of prizes that can be awarded as part of esports tournaments – general civil law rules apply (e.g. no *rei extra commercium* such as illegal drugs can be awarded). Apart from that, awarding players with alcoholic beverages or tobacco products is inadvisable and potentially illegal, as it could be viewed as an illegal promotion of said products. If the organizer allows minors to participate in the tournament, awarding players with alcoholic beverages or tobacco products is prohibited.



## Online vs. offline esports tournaments

Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

### Offline tournaments:

As indicated above, certain rules regarding security of the event may apply if the tournament is qualified as a mass event. Apart from that different data protection rules (e.g. connected with CCTV) and intellectual property rules (e.g. regarding recording of the event, sponsorships of the teams participating in the tournament etc.) may apply than in case of an online tournament.

### Online tournaments:

As indicated under section 2. if the esports entity has its place of residence or registered office in a EEA country other than Poland, this country's law will apply to online tournaments (with some exceptions like Polish consumer law). If the entity's place of residence or registered office is located in Poland, the Act on Electronically Supplied Services will apply, which means that certain information (and other) obligations have to be met.



## Other local requirements

Are there any other key local requirements?

There are no dedicated Polish acts or provisions applicable to esports as it is covered by the general Sport Act.

In case of land-based esports events, the Act on Security of Mass Events may be applicable, which dictates the safety standards and regulations regarding mass events, the terms of obtaining a permit for the organization of such events, rules on the processing of personal data during such event and the principles of organizers' liability in this regard.

Depending on the scope of the planned event, the above mentioned regulation would need to be complied with.

Further regulations may be applicable, subject to the scope of the planned event/service.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

There is no specific timing for the performance of esports tournaments.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

Under Act on Polish Language, the information intended for consumers and all labor law documentation has to be drafted in Polish if the consumer or candidate for a job have their place of residence in Poland when a contract is concluded or if the contract is to be performed on the territory of Poland. It means that, for example, Terms and Conditions of an amateur esports tournament (both online and offline) directed at Polish players should be drawn up in Polish.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

The scope of potential sanctions depends on the applicable regulations. For example, breach of the on Electronically Supplied Services is subject to a fine of 5000 PLN (approx. 1157 EUR). Liability under the applicable intellectual property or consumer regulations is dependent on the scope of potential third party claims and specifics of the case. Practically, the most severe sanctions may be due to the infringement of the personal data protection laws, for example a breach of the GDPR can lead to administrative fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher.

As mentioned, the applicable regulations, facts of the case and the involvement of third parties may affect the scope of the potential penalties.

## Key contact



**Piotr Czulk**

**Associate**

DLA Piper Giziński Kycia sp. k.

T +48 22 540 74 57

piotr.czulk@dlapiper.com

# Portugal



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

There is no specific legal framework applicable to esports. However, considering the particularities of esports, there are Portuguese laws and regulations which have a relevant impact:

Decree Law no. 422/89, 02, December – “Gaming Law” (as amended) – establishing the legal framework on games of fortune and certain specific provisions regarding the operation of and engagement in games of skill in Portugal and establishing the sanctions for such provision’s violation

Decree Law no. 66/2015, 29, April – “Online Gambling and Betting Legal Framework” (as amended) – granting the monopoly of online gambling and betting to the State and regulating the conditions for operation of online gambling and betting by private entities, as well as establishing the sanctions for the illegal operation and offering of online gambling and betting

Decree Law no. 67/2015, 29, April granting the monopoly on sports land-based betting to the State and by the State to Santa Casa da Misericórdia and establishing the sanctions for the illegal operation and offering of land-based betting

## With regard to the applicability of prize promotion regulations to esports activities

Decree Law no. 422/89, 02, December – “Gaming Law” (as amended) – establishing certain specific provisions regarding the operating of and engagement in skill games in Portugal and establishing the sanctions for such provision’s violation

## With regard to the advertisement of esports related activities

Law no. 24/96, 31, July – “Consumer Law” (as amended) establishing the general principles on consumer protection

Decree Law no. 330/90, 23, October – “Advertising Code” (as amended) regulating advertising in general terms and establishing restrictions to games and betting advertising

Decree Law no. 57/2008, 26, March – Legal framework on Unfair Commercial Practices (as amended) regulating unfair commercial practices within the scope of B2C, including misleading advertising

Decree Law no. 23/2014, 14, February – Legal framework on entertainment and artistic events (as amended)

## With regard to the protection of intellectual property rights as part of esports activities

Decree Law no. 63/85, 14, March – “Code on Copyright and Connected Rights” (as amended) setting out Portuguese law on copyright and connected rights

Decree Law no. 110/2018, 10, December – “Industrial Property Code” setting out the Portuguese Industrial Property Code regulating, among other, trademarks and patents

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

Law no 58/2019, 8, August executing the General Data Protection Regulation in Portugal on the protection of individuals with regard to the processing of personal data and free movement of such data

Law no 41/2004, 18, August on personal data processing within the scope of electronic communications (as amended)



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

In general terms, entities operating abroad shall comply with Portuguese law in cases of esports events addressed to Portuguese players and/or consumers, even if they are also open to players and/or consumers of other jurisdictions.

The usage of claims in Portuguese language, the reference to Portugal in the T&C's and other circumstances might be considered by Portuguese authorities as indicators of the applicability of Portuguese law. The applicability of Portuguese law can lead to significant obligations under the rules, including tax liabilities.

Regarding online gambling, please note that any website available to be assessed from Portugal is subject to national laws and therefore access should be blocked if the online gambling licensing requirements are not complied with.



## Recognition of esports as a sport

**Is there any regulation according to which esports can fall under the legal category of sports?**

Esports are not formally recognized as a sport in Portugal and there is no dedicated legal or regulatory regime applicable to esports.



## Technical requirements of esports tournaments

**Do videogames need any certification to be used as part of esports tournaments?**

There is no dedicated certification for the usage of video games in esports tournaments, apart from the certifications necessary for their sale to the public, notably prior authorization from IGAC (Inspeção Geral das Atividades Culturais) and age rating.

However, if esports tournaments are subject to the application of the games similar to the games of fortune legal framework (applicable to games depending on luck or on luck combined with skill), prior authorization from the competent authorities will be necessary and, within such scope, the software and technological tools used will be assessed by such authorities. Furthermore, limitations on the entities allowed to display such games may apply.

Please also note that the operation of machines for which the results depend exclusively or mainly on skill and prizes are granted in cash, chips or anything of economic value is prohibited, except for the free extension of the machine use in view of the points obtained. However, this prohibition is not designed specifically for esports and it is not likely that a machine (for these purposes) exists.



## Sponsorship of esports tournaments

**Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?**

There are no specific requirements applicable to sponsorship agreements for esports tournaments, other than those provided by Article 21 of the Advertising Code that forbids the existence of references, explicit or implicit to games and betting in events addressed to minors or in which they may participate as the main participant, as well as in commercial communications and advertising of such events.

Also, the type of consideration due by the sponsor and the services provided by and to the sponsor can lead to regulatory and tax issues.



## Consumer Protection – advertising

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

Advertising Code and Decree Law no. 57/2008, 26, March on Unfair Commercial Practices contain general rules regarding protecting consumers and minors in Portugal, which will apply to advertising of videogames.



## Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

The Decree Law no 66/2015, 29, April and the Decree Law no 67/2015, 29, April grant the monopoly on online gambling and land-based betting to the State and, in the latter case, the State has granted the monopoly to Santa Casa da Misericórdia.

Although not likely, there is the risk that the payment of an annual registration fee to an esports tournament league might be considered as the monetary stake against which the reward is granted. Therefore, agreements with players need to be structured so that such risk is avoided.

Please note that at this stage, esports are not currently recognized in Portugal as sports, and therefore any gambling on esports is forbidden.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

The general rules regarding capacity to contract and therefore to participate in an esports tournament under Portuguese law is obtained at the age of 18. Article 127 of the Civil Code states that minors may enter into agreements regarding their profession (which would apply to professional esports players) and agreements which are within their natural capacity and involve low value amounts. The latter exception is difficult to apply in practice, especially for minors under 16 years old.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

Criteria of selection of participants need to be objective, transparent, and nondiscriminatory. In principle the provisions applicable to games similar to games of fortune (depending on luck or on luck combined with skill) are not applicable as esports tournaments are likely to fall within the scope of skill games. However, in cases such rules are considered to apply, esports tournaments would be limited to participants located in Portugal.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

In principle the provisions applicable to games similar to games of fortune (depending on luck or on luck combined with skill) are not applicable as esports tournaments are likely to fall within the scope of games of skill. However, in cases that such rules are considered to apply, stringent requirements apply to the contents of T&Cs and the formalities to be followed in an esports tournament. Furthermore, prior authorization and assessment of all the tournament materials (including software) would be required.

Additionally, T&Cs shall be drafted in accordance with Portuguese consumer laws and misleading advertising rules.

The mechanics of the esports tournament shall be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations and intellectual property laws.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

In cases where the tournament falls under the concept of games similar to games of fortune (depending on luck or on luck combined with skill), these activities may require the presence of local public authorities. Aside from such a scenario, general contract and consumer law rules will apply to the proper selection of winners.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can only enforce contractual provisions set out by the T&Cs of the tournament. However, limitations can apply to actions that can be taken against players without a court order.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

If esports tournaments fall under the concept of games similar to games of fortune (depending on luck or on luck combined with skill) then prizes can only be in kind, not in cash.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

In the case that esports tournaments are qualified as gambling, the online esports tournaments can fall under the online gambling licensing regime. However, please note that at this stage esports are not currently recognized in Portugal as sports, and therefore any gambling activity on esports is forbidden.



## Other local requirements

### Are there any other key local requirements?

Esports are not currently recognized in Portugal as sports, and therefore the gambling activity on esports is forbidden. Additionally, there is no dedicated regime applicable to esports. As a consequence, a deeper review of the mechanics of esports tournaments is necessary to avoid challenges.

Also note that in certain circumstances esports events may be deemed as public entertainment events or non-artistic entertainment events carried out in artistic events venues which are subject to previous communication or license (depending on its specific characteristics) and may be subject to the fulfillment of other legal requirements.

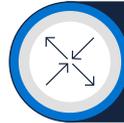


## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

If the tournament falls under the concept of games similar to games of fortune (depending on luck or on luck combined with skill), these activities

require authorization. Such competence was recently transferred to the President of the Competent Municipality which should be filed at least 15 days prior to its start (depending on the Municipality).



## Translations

### Are the terms of the esports tournament required to be translated by law?

Under consumer regulations, the information intended for consumers and users shall also be shown in Portuguese and must be shown in characters that are no less visible and legible than those used for the other languages.



## Penalties for non-compliance

### What are the penalties for non-compliance?

In the case of infringement of the law on unfair practices, an administrative sanction between EUR250 and EUR3,740 (for individuals) and between EUR3,000 and EUR44,891.81 (for legal persons) can be issued. In the case of breach of gambling laws, both criminal and administrative sanctions can apply. Additional sanctions and fines can apply, depending on the challenged breach.

## Key contacts



### Daniel Reis

Partner

DLA Piper ABBC

T +351 213 583 620

daniel.reis@dlapiper.com



### Margarida Leitão Nogueira

Senior Associate

DLA Piper ABBC

T +351 213 583 620

margarida.nogueira@dlapiper.com

# Puerto Rico



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Act No. 81-2019, Act of the Gaming Commission of the Government of Puerto Rico (not yet codified), authorizes betting on athletic events and eGames, such as esports and fantasy leagues, and establishes a Commission to regulate it. <http://www.bvirtual.ogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/81-2019.pdf>

Executive Order 2019-028 of Governor Ricardo Rosselló creates a Videogames and Electronic Games Leagues Task Force to develop and implement initiatives to promote esports betting in order to increase the economic impact of this industry in Puerto Rico. <https://www.estado.pr.gov/en/executive-orders/>

A regulation on esports in Puerto Rico is in process and should be approved by the end of 2020. Gaming Laboratories International is advising the Government's Gaming Commission on the operation of esports for this regulation.

## With regard to the applicability of prize promotion regulations to esports activities

It is not clear if the Department of Consumers' Affairs' Regulation on Raffles, Regulation 7764 of October 27, 2009, applies to esports. <https://www.daco.pr.gov/wp-content/uploads/2018/11/7764.pdf>

## With regard to the advertisement of esports related activities

Department of Consumers' Affairs' Regulation Against Misleading or Deceitful Practices and Advertisement, Regulation 8599 of May 28, 2015 (Rule 8-H regulates publicity and promotion of "games of chance" and requires including a warning on the risks of gambling addiction). <https://www.daco.pr.gov/wp-content/uploads/2019/05/8599.pdf>

## With regard to the protection of intellectual property rights as part of esports activities

There is no regulation related to intellectual property rights particular to esports. Regular intellectual property laws would apply, including:

U.S. Copyright Act of 1976, 17 U.S.C. secs. 101-1401

U.S. Patent and Trademarks Laws, 35 U.S.C. 35 U.S.C. secs. 1-390

Act No. 55-2012, Puerto Rico Moral Rights Act, 31 L.P.R.A. secs. 1401(j)-1401(ff)

## With regard to the processing of personal data as part of esports activities

There is no regulation related to data privacy rights particular to esports. Regular consumers' data privacy laws would apply, including:

Act No. 39-2012, Privacy Policies Act, and Department of Consumers Affairs' Regulation 8568 of 2015 require the publication of a privacy policy informing the type of information compiled and preserved; any person or entity with which the operator shares the information and under which circumstances the information will be shared with third parties.

Act No. 234-2014 establishes procedures to discard personal information.

Act No. 111-2005, as amended by Act No. 97-2008, and the Department of Consumers Affairs' Regulation 7376 of 2007 requires protection of personal information and establishes procedure in case of data breach.



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

No. Act No. 81-2019 only operates within the territorial limits of Puerto Rico. Operators must use technology that does not allow persons outside of Puerto Rico to place online bets in Puerto Rico.



### Recognition of esports as a sport

Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Puerto Rico. However, the Department of Sports and Recreation has integrated esports with other traditional sports in its promotions for recreation and has sponsored esports tournaments.



### Participation in esports tournaments

Can players pay an admission fee to participate in esports tournaments?

This area is not yet regulated.



### Technical requirements of esports tournaments

Do videogames need any certification to be used as part of esports tournaments?

Not at the moment, but this may be considered in the regulation currently being drafted.



### Participation of minors in esports tournaments

Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Persons under the age of 18 are excluded from the definition of "authorized players".



### Sponsorship of esports tournaments

Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are not any specific requirements applicable to sponsorship agreements for esports tournaments.



### Selection of participants

Is it possible to place any restriction on the players that can participate in an esports tournament?

This area is not yet regulated.



### Contracting esports players

Are there particular requirements for t&cs of esports tournaments?

Terms and conditions of esports tournaments are not regulated at this moment.



### Consumer Protection – advertising

Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Misleading advertising and unfair commercial practices are generally prohibited. Additionally, any gambling activity must include warnings about the risks of compulsive gambling.



### Selection of winners

Are there any requirements for the selection of winners and award of prizes for esports tournaments?

This area is not regulated yet.



## Sanctions against players

Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

There is no regulation related to sanctions against players. However, collusion, money laundering, deceitful practices and other illegal activities are forbidden by Act No. 81-2019.



## Prizes of esports tournaments

Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

This area is not yet regulated.



## Online vs. offline esports tournaments

Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

Act. No. 81-2019 establishes a different tax percentage to bets on esports placed physically (7%) and bets placed over the Internet (12%).



## Other local requirements

Are there any other key local requirements?

Operators of online gambling and betting must comply with license requirements established by Act No. 81-2019.

By the end of 2020, a regulation from the Gaming Commission should be enacted regulating all aspects of esports in Puerto Rico.



## Timing

Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

No



## Translations

Are the terms of the esports tournament required to be translated by law?

No. However, in consumer cases, the availability of information in Spanish or English is considered if there is a claim for misleading advertising.



## Penalties for non-compliance

What are the penalties for non-compliance?

The Gaming Commission is authorized to impose administrative sanctions of up to USD10,000 for violations of Act No. 81-2019 or its regulations. It may also suspend or cancel licenses of operators of online betting systems.

## Key contact



**Nikos Buxeda**

**Managing Partner**

DLA Piper (Puerto Rico) LLC

T +1 787 945 9114

nikos.buxeda@dlapiper.com

# Romania



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Government Emergency Ordinance no. 77/2009 on the organization and exploitation of games of chance

## With regard to the applicability of prize promotion regulations to esports activities

Government Ordinance no. 99/2000 regarding the marketing of products and services

Government Ordinance no. 21/1992 on consumer protection

Law no. 363/2007 on the fight against unfair commercial practices of traders in their relationship with consumers and the harmonization of regulations with European consumer protection legislation

## With regard to the advertisement of esports related activities

Law no. 148/2000 on advertising

Law no. 158/2008 on misleading and comparative advertising

Law no. 185/2013 on the placement and authorization of means of advertising

## With regard to the protection of intellectual property rights as part of esports activities

Law no. 8/1996 on copyright and neighbouring rights

Law no. 84/1998 on trademarks and geographical indications

Regulation on the application of Law no. 84/1998 on trademarks and geographical indications

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of

personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

Law no. 190/2018 on the measures for the application of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Entities operating abroad shall comply with the provisions of the Romanian law in cases where esports services/products are addressed to Romanian consumers, even if such services/products can be accessed/bought by consumers from other jurisdictions.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Romania and there is no special legislation applicable to esports.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

There are no legal provisions with respect to a certification for the use of videogames as part of esports tournaments, apart from the certifications necessary for their sale to the public.



### Sponsorship of esports tournaments

Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no legal provisions with respect to sponsorship agreements relating to esports tournaments.



### Selection of participants

Is it possible to place any restriction on the players that can participate in an esports tournament?

While there are no legal provisions with respect to the possibility of placing restrictions to the players participating in an esports tournaments, it is recommended to have provided such restrictions in the T&Cs, by using objective, transparent and non-discriminatory criteria.



### Consumer Protection – advertising

Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

There is no specific regulation regarding the advertising of videogames during esports tournament; however, any advertising should observe general provisions regarding advertising (such as, no deceptive advertising and performance of comparative advertising only under certain conditions).



### Contracting esports players

Are there particular requirements for t&cs of esports tournaments?

There are no particular requirements for the T&Cs of esports tournaments.

However, as a general comment, the T&Cs of an esports tournament should be drafted with the observance of the consumers laws' provisions.



### Participation in esports tournaments

Can players pay an admission fee to participate in esports tournaments?

The payment by the players of any price for the participation in esports tournaments can be construed as the payment of a participation fee to gambling.

In addition, should the esports tournament imply a lottery (i.e. a practice of promoting products/services so as to stimulate to the participants the idea of a prize following a drawing), a regulation must be in place. Among other conditions that need to be fulfilled with respect to this regulation, the regulation must be authenticated by a public notary before such lottery taking place.



### Participation of minors in esports tournaments

Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

There are no specific regulations regarding the participation of minors in esports tournaments; however, the general legal provision forbidding the acces to gambling for minors could be construed as a restriction applicable to the participation of minors in esports tournaments.

Also as a general comment, the esports tournament should be structured so as to observe the data protection and intellectual property laws provisions.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

There are no specific requirements regarding the selection of winners and award of prizes for esports tournaments. However, general contract and consumer law rules will apply, thus the criteria for selecting the winners and awarding the prizes should be objective, transparent and non-discriminatory.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can only enforce contractual provisions set out by the T&Cs of the tournament. Certain limitations can apply to actions that can be taken against players without a court order.

In case the unlawful conduct of the player can be deemed as a criminal deed under Romanian law, the organizer has the possibility to submit a complaint with the Romanian criminal investigation authorities.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There is no specific restriction on the type of prizes that can be awarded as part of esports tournaments.

In case the prizes are awarded randomly, this prize awarding mechanism might make Romanian prize promotion regulations applicable, depending on the mechanics of the tournament. If these provisions apply, certain additional requirements must be fulfilled by the organizer (e.g. the organizer has to publicly communicate the list of the awarded prizes and to publish a regulation of the prize promotion authenticated by a notary public).

If players are paying in cash to participate in an esports tournament which contains elements of chance and obtain a winning in cash or in kind with economic value, there is a risk of requalification of the tournament as gambling.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

There is no specific major difference between online esports tournaments and land-based esports tournaments. However, certain minor differences may arise, specifically in respect of the acceptance of the terms and conditions of the tournament, which can be accepted by means of a click in case of online tournaments and in writing, in case of land-based tournaments.

Further, in case the tournament would be re-qualified as gambling, given that the players are paying in cash to participate and the tournament contains elements of chance allowing the players obtain a winning in cash or in kind with economic value, then the certification requirements that the organizer has to fulfill may differ depending on whether the tournament is online or land-based.



## Other local requirements

### Are there any other key local requirements?

Operators holding a general online gambling and betting license as well as those holding a betting shop license can offer bets on esports events, within limits set out by gambling regulations.

Esports are not currently recognized in Romania as sports and there is no dedicated regime applicable to esports.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

No specific timing restrictions are applicable. However, the T&Cs of the tournament should be made available to the participants prior to the entrance into the competition.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

Under consumer regulations, the information intended for consumers and users shall be shown in Romanian, in an accessible form, so that it can be easily understood by the consumers and users.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

In case of infringement of the laws aimed to ensure consumers protection, an administrative sanction between RON 100 and RON 100,000 can be applied. On the contrary, in case of breach of gambling laws, criminal sanctions can also be applicable. Additional sanctions and fines may be applicable, depending on the challenged breach.

## Key contact



**Ana-Maria Andronic**

**Head of Intellectual Property and Technology**

T +40 372 155 816

[anamaria.andronic@dlapiper.com](mailto:anamaria.andronic@dlapiper.com)

# Russia



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Federal Law 244-FZ "On State Regulation of Organization and Conduct of Gambling Activities and Adoption of Amendments to Various Laws" providing that undertaking the business of bookmaking (including totalizators) is subject to strict licensure and regulation. Online betting in this sphere is limited to bookmaking and totalizators, again under strict regulation

## With regard to the applicability of prize promotion regulations to esports activities

Russian Federal Law on Lotteries (No. 138-FZ)

Russian Federal Law "On Advertising" (No. 3-FZ)

## With regard to the advertisement of esports related activities

Law "On Advertising" (No. 3-FZ)

## With regard to the protection of intellectual property rights as part of esports activities

There are no specific rules regarding IP rights in the context of e-Sports activities. The general rules regarding IP rights (the basic framework being in Part IV of the Russian Civil Code) will apply.

## With regard to the processing of personal data as part of esports activities

There are no specific rules regarding personal data process in the context of e-Sports activities. The general rules of personal data protection (the basic framework being in the Law "On Personal Data" (No. 152-FZ)) will apply.



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Russian laws in this sphere generally do not have extra-territorial effect, but in certain circumstances, Russian authorities will seek to assert jurisdiction where

the foreign operators conduct their activities through websites or other means which are targeted specifically to the Russian market. For example, Russian language websites clearly focused on Russian participants or operating through domain names in traditionally Russian-oriented ranges (.ru. su, etc.).

In practice the most likely only sanction which can be applied to foreign e-Sport activities violating Russian 'public order', is the blocking of the website through which the violating activity is run. In practice, we have not heard of practical precedents of such enforcement.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

Yes, esports are recognized as a sport in Russia. The Russian Ministry of Sport maintains a register of officially-recognized sports. Sports may be recognized on a national or regional level. Recognition of esports is on the national level.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification under law for the usage of video games in esports tournaments, apart from the certifications necessary for their sale to the public, such as those provided by video game and Internet content age rating systems are based on the self-certification rule.

While there are no special certification requirements under law, to the extent that the tournament organizers are working under the auspices of the Russian e-Sports Federation (a non-governmental trade organization), any requirements established by the federation may apply.



## Sponsorship of esports tournaments

Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are not any specific requirements applicable to sponsorship agreements for esports tournaments as a general matter. If the tournament is considered to be a promotional or advertising activity, the rules applicable to advertising would apply. We note that the law forbids any form of direct and indirect advertising related to betting activities or gambling.

Also, the type of consideration due by the sponsor and the services provided by and to the sponsor can lead to regulatory and tax issues.



## Consumer Protection – advertising

Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

There are no specific rules regulating advertising of video games during esports tournaments or events. General rules relating to advertisement, especially if targeting minors will apply, however.



## Participation in esports tournaments

Can players pay an admission fee to participate in esports tournaments?

Competitions where a price is paid in by the player with a financial result are likely to be considered gambling, which would not be allowed under law.

In addition the law prohibits a player from placing bets on games in which they may influence the outcome.



## Participation of minors in esports tournaments

Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Yes, age limitations apply to participation in esports tournaments. Participants under 18 years old must provide written permission from their parents (or guardians).



## Selection of participants

Is it possible to place any restriction on the players that can participate in an esports tournament?

Criteria of selection of participants need to be objective, transparent, and non-discriminatory.



## Contracting esports players

Are there particular requirements for t&cs of esports tournaments?

The standard rules under law for organizing any tournament would apply to esports tournaments.

Tournaments and contests of skill are specifically regulated under law. The main requirements set are:

- The competition must be directed to the achievement of socially amenable purposes;
- The announcement of the competition must contain, at least, the essence of the task, criteria and procedure of assessment of results, place, term and order of delivery of results, amount and type of award, order and terms of announcement of the competition's results;

- The competition organizer may modify or cancel the competition only within the first half of the set term of delivery and must make the announcement in the same way as the initial announcement. The organizer must reimburse the expenses incurred by participants before such cancellation or modification.

To the extent that the tournament organizers are working under the auspices of the Russian e-Sports Federation (a non-governmental trade organization), any requirements established by the federation may apply.

Additionally, the mechanic of the esports tournament must be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations and intellectual property laws.



### Selection of winners

#### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

The selection of winners must be done fairly, transparently and in accordance with the published terms and conditions of the tournament.

Additionally, general contract and consumer law rules will apply to the proper selection of winners.



### Sanctions against players

#### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can only enforce provisions set out by the terms and conditions of the tournament.



### Prizes of esports tournaments

#### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There are no specific restrictions on the types of prizes that can be awarded as part of an esports tournament as opposed to other types of tournaments.



### Online vs. offline esports tournaments

#### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

There are no specific regulations applicable to online esports tournaments, so the general rules applicable to online activity will apply.



### Other local requirements

#### Are there any other key local requirements?

Licensed bookmakers and totalizator organizers can generally offer bets on esports events, within limits set out by gambling regulations.

Esports are recognized in Italy as sports. The Russian e-Sports Federation is the emerging sports federation for esports and is establishing its official recognition at this time. esports activities do not necessary have to be undertaken under the auspices of the federation, though.



### Timing

#### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Timing requirement would be those established generally for skill contests.



### Translations

#### Are the terms of the esports tournament required to be translated by law?

To comply with Russian consumer regulations, the information intended for consumers and users should be clearly shown in Russian and/or any applicable local language.



## Penalties for non-compliance

### What are the penalties for non-compliance?

The general provisions for non-compliance with consumer and promotion rules would apply – there are no specific rules for esports.

Aside from the civil damage awards (in the case of any breach of the rules), there may be administrative (or even criminal) sanctions applied to an organizer.

The average sanction is an administrative fine of 200,000 Russian Rubles (approx. USD3,000). The maximum sanction for gross violations is three years imprisonment (applicable to officers of legal entities), but it is not likely to transpire in practice.

In addition, access to websites through which violations are conducted can be blocked.

## Key contact



### Michael Malloy

Head of the Intellectual Property  
and Technology Practice Group

DLA Piper Rus

T +7 495 221 4175

michael.malloy@dlapiper.com

Singapore



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

We are not aware of any gambling laws in Singapore which explicitly regulate gambling and wagering on the outcome of esports tournaments. However, please note the following:

### GAMBLING GENERALLY

The Common Gaming Houses Act (Chapter 49) (the "CGHA") regulates the playing of any game of chance or of mixed chance and skill for money or money's worth (except for remote gambling). The Remote Gambling Act 2014 (the "RGA") regulates remote gambling.

"Remote gambling" is defined under the RGA as gambling in which a person participates by the use of remote communication, even if the gambling is done only partly by means of remote communication.

"Gambling" is defined under the RGA as betting, gaming and/or participating in a lottery, and "gaming" means playing a game of chance (whether this involves both an element of chance and an element of skill or is a game that is presented as involving an element of chance) for money or money's worth.

Please refer to "**Governing law – With regard to the applicability of prize promotion regulations to esports activities**" for more details.

### GAMBLING AT ESPORTS EVENTS

#### Online Gambling

Online esports gambling may be regulated under the RGA.

Under the RGA, it is an offence for an individual who in Singapore gambles using (i) remote communications; and (ii) a remote gambling service by non-exempt operators. An individual who commits an offence under the RGA may be liable to a fine or imprisonment (or to both).

It is also unlawful under the RGA for a person to provide remote gambling services. This prohibition applies to a wide range of persons including agents providing remote gambling services for another (whether such agent is inside or outside Singapore), overseas remote gambling services with Singapore-customer link and Singapore-based remote gambling service (whether

that service has a foreign-customer link or a Singapore customer-link). Contravention of this prohibition may result in a fine or imprisonment (or both). In addition, the Singapore authorities are empowered under the RGA to undertake certain blocking measures, including but not limited to, the issuance of blocking orders against websites which provide unauthorized remote gambling services that are or may be used by individuals present in Singapore to gamble or which contain remote gambling service advertisement or promotion accessible in Singapore.

Generally speaking, a person who intends to provide a Singapore-based remote gambling service with a Singapore-customer link must apply to the Minister for Home Affairs for an exemption from the RGA before providing such services.

Singapore Pools (Private) Limited ("**Singapore Pools**"), which is the sole legal operator for lottery and sports betting in Singapore, is an exempt operator under the RGA. However, Singapore Pools does not currently accept bets for esports events. Singapore Pools is wholly owned by the Singapore Totalizator Board, which is a statutory board under the Ministry of Finance of Singapore.

#### Land-based gambling

The CGHA and the Betting Act (Chapter 21) (the "**BA**") may apply to land-based gambling at esports tournaments. The CGHA and the BA do not apply to or in relation to any remote gambling within the meaning of the RGA.

#### (i) CGHA

Under the CGHA, it is an offence for a person to game in a common gaming house (which includes, among other things, any place kept or used for gaming to which the public or any class of the public has or may have access). Such an offence may attract a fine or imprisonment (or both).

The term "gaming" is defined under the CGHA to mean the playing of any game of chance or of mixed chance and skill for money or money's worth.

Any person or organisation who conducts or supervises any gaming may apply to the Minister for Home Affairs for an exemption from all or any of the provisions of the CGHA. If an exemption is obtained from the Minister for Home Affairs, participation in such games will be lawful.

**(ii) BA**

Under the BA, it is an offence for a person to bet or wager in a common-betting house (which includes, among other things, any place kept or used for betting or wagering on any event or contingency of or relating to any sporting event to which the public or any class of the public has or may have access to) or with a bookmaker in any place or by any means, or who for the purpose of betting or wagering loiters in any place to which the public has or may have access.

Such offence may attract fines or imprisonment (or both). However, any persons or organizations operating or supervising betting can apply to the Minister for Home Affairs for an exemption from all or any of the provisions of the BA.

### With regard to the applicability of prize promotion regulations to esports activities

The Media Development Authority of Singapore (“**MDA**”) (now the Infocommunications Media Development Authority (“**IMDA**”)) issued a press release on 28 January 2015 to clarify that the RGA does not cover games which do not, as part of the game design, enable players to receive money or money’s worth consequent to the outcome of that game.

The following types of games will therefore not be covered by the RGA:

- Games which do not allow players to win, through an in-game facility, money or real-world merchandise which can be exchanged for money;
- Games which allow players to purchase or exchange game credits or tokens, but do not provide in-game facility to convert these game credits or tokens to money or real-world merchandise which can be exchanged for money;
- Games which allow players to purchase, gain or exchange game enhancement features, e.g. weapons, skills, but do not provide in-game facility to convert these game enhancement features to money or real-world merchandise which can be exchanged for money; and
- Games which rank players but do not provide in-game facility to convert these ranking positions to money or real-world merchandise which can be exchanged for money.

The MDA (now IMDA) also clarified in its press release that leaderboards which rank and reward top players or tournaments organized by game developers or

promoters where players are able to win real-world prizes would generally not be prohibited by the RGA, provided that such games are not casino-style games or used as a means of facilitating syndicated criminal activity.

However, Singapore regulators are looking at new laws to regulate novel gaming products which incorporate elements of gambling. One such example is loot boxes, which are randomised in-game bundles, that gamers can purchase. The pay-out of the loot box is assigned by chance, and can include prizes such as weapons or skins that enhance the game experience. Such gaming products are currently not expressly regulated in Singapore but this may change in the future.

### With regard to the advertisement of esports related activities

Advertisements published in Singapore must adhere to the Singapore Code of Advertising Practice (the “**Code**”) administered by the Advertising Standards Authority of Singapore (the “**ASAS**”). In particular, the ASAS Advisory on Gambling Advertisements and Promotions (the “**ASAS Advisory**”) sets out guidelines on gambling advertisements and promotions. The ASAS Advisory must be read in conjunction with the Code and applicable laws. The ASAS has various powers including, but not limited to, requesting an advertiser to amend or withdraw any advertisement that, in the opinion of ASAS, is contrary to the Code and/or the ASAS Advisory.

In addition, the RGA prohibits the publication of remote gambling service advertisements, unless such publication is carried out by a person who has obtained an exemption and the publication of the remote gambling services advertisement is in accordance with this person’s certificate of exemption.

### With regard to the protection of intellectual property rights as part of esports activities

Intellectual property rights arising as part of esports activities may be protected under the following legislation (where applicable):

- Copyright Act (Chapter 63) of Singapore relating to copyright and matters related thereto;
- Trade Marks Act (Chapter 332) of Singapore setting out the law for trademarks and to enable Singapore to give effect to certain international conventions on intellectual property and for matters in connected therewith; and

- Patents Act (Chapter 221) of Singapore setting out the law of patents and to enable Singapore to give effect to certain international conventions on patents, and for matters connected therewith.

## With regard to the processing of personal data as part of esports activities

The Personal Data Protection Act 2012 of Singapore (the “**PDPA**”) governs the collection, use and disclosure of an individual’s personal data by organizations.

In general, the PDPA sets out the baseline standard of protection for personal data which all organizations must comply with when carrying out activities relating to the collection, use or disclosure of personal data. For more information on the penalties which may be imposed for non-compliance with the PDPA, please refer to “**Penalties for non-compliance**”.



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

In general, entities operating abroad are required to comply with applicable Singapore laws where esports events are held in Singapore and/or addressed to Singapore players and/or consumers, even if they are also open to players and/or consumers of other jurisdictions.

In addition, certain sections of the RGA are expressed to have extra-territorial effect. For example, the following persons will have to comply with the RGA:

- a person who provides an overseas remote gambling service with a Singapore-customer link; and
- a person who by any conduct (inside or outside Singapore) authorizes a promotion in Singapore of, any remote gambling.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

We are not aware of any dedicated legal or regulatory regime applicable to esports in Singapore. However, esports was contested as a medal event for the first time

ever in the 2019 Southeast Asian Games. Together with the establishment of the headquarters of the Global Esports Federation (GEF), the world’s first governing body for esports in Singapore in late 2019, we may soon see more regulation and guidelines for esports in the near future.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

We are not aware of any dedicated certification in connection with the usage of online video games in esports tournaments.

In general, the Films Act (Chapter 107) of Singapore (the “**FA**”) requires all video games that are contained in a disc, tape, storage device or other article or thing, and which are for distribution in Singapore, to be submitted to the IMDA for rating and classification. To the extent that video games used in esports tournaments are made available via internet download, the use of such video games in such esports tournament (and not for distribution) does not require classification under the FA. However, certain approvals and restrictions apply to the advertising of video games, please refer to “**Consumer Protection – Advertising**”.



### Sponsorship of esports tournaments

#### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

We are not aware of any specific requirements under Singapore law applicable to sponsorship agreements for esports tournaments. However, there are certain regulations and guidelines applicable to the advertisement of esports related activities, gambling and advertisement of video games. Please refer to “**Governing Law**” and “**Consumer Protection – Advertising**” for more details.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

In general, advertisements published in Singapore must adhere to the Code and applicable laws. The basic premise of the Code is that all advertisements should be legal, decent, honest and truthful. The Code applies to all advertisements for any goods, services and facilities appearing in any form, or any media. In particular, the general principles of the Code provide, among other things, that (a) advertisements should not contain anything that might lead or lend support to acts of violence and anti-social behavior, nor should they appear to condone or lighten the gravity of such acts; and (b) in the case of advertisements that are related to, addressed to or are likely to influence children and young people, such advertisements (i) should not contain anything that is likely to result in their physical, mental or moral harm; (ii) should not exploit their credulity, loyalty, vulnerability or lack of experience (for example, advertisements should not make a direct appeal to children to purchase any product unless the product is one that would be likely to interest children and is something that they could reasonably afford); and (iii) should not encourage excessive purchases in order to participate in events.

The ASAS has various powers including, but not limited to, requesting an advertiser to amend or withdraw any advertisement that, in the opinion of ASAS, is contrary to the Code. See also “**Governing law – With regard to the advertisement of esports related activities**” above.

More particularly, certain restrictions apply to promotional materials for video games such as trailers and game demonstrations and print publicity materials.

All video games that are contained within a disc, tape, storage device or other article or thing, and which are for distribution in Singapore, need to be declared to the IMDA for classification. The purpose of classification is to protect the young from mature content while allowing wider choices for adults. There are two classification ratings, being the Advisory 16 (ADV16) (which is an advisory rating that advises that the relevant video game is suitable for persons aged 16 and above) and the Mature 18 (M18) (which is an age-restricted rating enforceable by law that restricts the video game to persons aged 18 and above).

Once a video game is classified, posters displayed at public places should display the rating and consumer advice. ADV16 and M18 video games, and any related promotional films containing classifiable elements should not be publicly exhibited except in a restricted demonstration area. Those below the age of 18 should not be allowed to enter a restricted demonstration area where a M18 video game is being exhibited. Print publicity materials for video games are subject to certain restrictions including, among other things, such advertisements must not depict explicit acts of cruelty or violence as well as any lewd, obscene or offensive act, word or message of any kind. In addition, the advertisement must not be displayed in a manner or place likely to cause offence to any section of the public. Further details on the IMDA classification and the publicity guidelines on video games are available on the IMDA website [here](#).

In addition, every advertisement for a video game that is intended for distribution or public exhibition must be submitted to the IMDA for approval.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

We are not aware of any specific statutory requirements under Singapore law governing the price which players pay to participate in esports tournaments.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

In general, the capacity to contract under Singapore law is obtained at the age of 18 years. Contracts entered into with minors (that is, persons under the age of 18) are generally not enforceable against the minors. In addition, esports tournaments may also impose age-related requirements in respect of participants in such tournaments.



## Selection of participants

Is it possible to place any restriction on the players that can participate in an esports tournament?

The criteria of selection of players who may participate in an esports tournament will typically be regulated by the respective tournament and game rules of the esports tournament.



## Contracting esports players

Are there particular requirements for t&cs of esports tournaments?

The contents of the T&Cs should be drafted in compliance with applicable contract law and other Singapore laws such as data protection laws and intellectual property laws.



## Selection of winners

Are there any requirements for the selection of winners and award of prizes for esports tournaments?

The selection of winners and award of prizes for esports tournaments are generally governed by the T&Cs and respective tournament and game rules of the esports tournament. However, please note that the award of certain prizes may potentially result in the esports activities being construed as gambling and regulated under the relevant gambling laws, please see "**Governing Law**" and "**Prizes of esports tournaments**".



## Sanctions against players

Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers of esports tournament may enforce the relevant contractual provisions (if any) as set out by the T&Cs of the tournament.



## Prizes of esports tournaments

Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

We are not aware of any specific statutory requirements under Singapore law prescribing the type of prizes that may be awarded in an esports tournament.

However, where players play to acquire a chance of winning money and where the game format allows for conversion of in-game credits to money or real-world merchandise, such activities may be prohibited or regulated under the RGA.

In respect of tournaments organized by game developers or promoters where players can win real-world prizes, the RGA does not generally prohibit mechanisms to reward players for their skill, provided that these are not within casino-style games or are not used as a means of facilitating syndicated criminal activity. See also "**Governing law - With regard to the applicability of prize promotion regulations to esports activities**" for more details.



## Online vs. offline esports tournaments

Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

Depending on the game design/format (for example, whether an element of chance is involved and whether money or money's worth are awarded as prizes), participation in an esports game may constitute gambling by the player under the relevant gambling laws. Different regulations apply to online gambling and land-based gambling. Please refer to "**Governing law**" for more information.



## Other local requirements

Are there any other key local requirements?

Esports is a relatively new phenomenon and the law on esports is developing. There is currently no dedicated legal or regulatory regime applicable to esports in Singapore. A deeper review of the mechanics of esports tournaments and its ecosystem is necessary to avoid challenges.



## Timing

Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Not applicable.



## Translations

Are the terms of the esports tournament required to be translated by law?

There is no such statutory requirement under Singapore law.



## Penalties for non-compliance

What are the penalties for non-compliance?

The Personal Data Protection Commission (PDPC) may, if it is satisfied that an organization is not complying with any provision in Parts III to VI of the PDPA (in relation to the protection, collection, use, disclosure, access to, correction of and care of personal data), give the organization such directions as the PDPC thinks fit in the circumstances to ensure compliance with the relevant provision(s). The PDPC may, among other things, direct the relevant organization to pay a financial penalty of such amount not exceeding S\$1 million as the PDPC thinks fit. A recent draft Amendment Bill to the PDPA has

been issued. We expect that this Amendment Bill will be passed as law in the later part of 2020. Once passed, the PDPC will have significantly greater enforcement powers, including the ability to impose higher financial penalties on organizations. We recommend that organizations follow the developments of the Amendment Bill closely.

For information on the penalties for non-compliance with the RGA, CHGA and the BA, please refer to **“Governing law”**.

Please also refer to **“Governing law – With regard to the advertisement of esports related activities”** for more information on the penalties for non-compliance with advertising regulations and guidelines.

## Key contact



**Yue Lin Lee**  
Registered Foreign Lawyer  
T +852 21030890  
yuelin.lee@dlapiper.com



**Mei Sum Chan**  
Associate  
T +65 6512 9552  
meisum.chan@dlapiper.com



**Philip Lee**  
Partner  
T +65 6512 6067  
philip.lee@dlapiper.com

*DLA Piper is restricted for regulatory reasons from practising local law in Singapore, as are most international law firms. Our team leverages our own knowledge and experience in international advisory and transactional work, whilst regularly working alongside leading local firms who deliver Singapore law advice as needed.*

Slovakia



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Act No. 30/2019 Coll. on Gambling Games and on amendments to certain acts (the "Gambling Act"). In accordance with the Gambling Act, a gambling game is a game in which players, after paying a stake, may obtain a winning. The result of a gambling game is wholly or partially subject to chance or a previously unknown result of a certain circumstance or event. Gambling games include in particular lottery, betting or gambling games operated by means of technical equipment operated directly by gamblers, resp. other technical equipment.

## With regard to the applicability of prize promotion regulations to esports activities

Act No. 513/1991 Coll. the Commercial Code, as amended (the "Commercial Code")

Act No. 40/1964 Coll. the Civil Code, as amended (the "Civil Code")

Act No. 250/2007 Coll. on Consumer Protection, as amended (the "Consumer Protection Act")

## With regard to the advertisement of esports related activities

Act No. 513/1991 Coll. the Commercial Code, as amended (the "Commercial Code")

Act No. 250/2007 Coll. on Consumer Protection, as amended (the "Consumer Protection Act")

Act No. 40/1964 Coll. the Civil Code, as amended (the "Civil Code")

Act No. 147/2001 Coll. on Advertising, as amended

Act No. 270/1995 Coll. on State Language, as amended

## With regard to the protection of intellectual property rights as part of esports activities

Act No. 185/2015 Coll. the Copyright Act, as amended

Act No. 506/2009 Coll. on Trademarks, as amended

Act No. 435/2001 Coll. on Patents, Supplementary Protection Certificates, as amended (the "Patent Act")

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ("General Data Protection Regulation" or "GDPR")

Act No. 18/2018 Coll. on Personal Data Protection



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

If the foreign entities focus on Slovak consumers (even online only) or otherwise conduct their activities in the territory of the Slovak Republic, they must observe the local rules in particular with respect to consumer protection.

With respect to gambling games operation, the Slovak Gambling Act has a specific regime and may be enforceable also against entities operating abroad. Slovakia currently has a blocking regime in place in order to prohibit the operation of gambling games without a Slovak license.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as an official sport in Slovakia and no specific legal or regulatory regime applies to esports.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

Only equipment and systems technically assessed by an authorized testing laboratory holding a valid certificate can be used in gambling game operation. However, this method of the authorized testing of videogames does not seem to be required for videogames used in esports tournaments. The videogames shall meet the general requirements for placing products on the Slovak market.

Slovakia is also a member of PEGI (Pan European Game Information) and is committed to respecting the age rating system of the videogames with respect to violence and other aspects of videogames. The videogames have to comply with intellectual property laws.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

If a requirement to pay a price to participate in esports tournament is considered (e.g. a registration fee), it is necessary to avoid a situation where the prize promotion could be interpreted as a gambling game (game of chance).

In general, the players can pay any price to participate in the tournaments as there is no explicit regulation in Slovakia. There are no limitations or restrictions for the organizers. However, the price to participate in the tournament shall be published in advance and be clearly stated in the terms and conditions applicable to the tournament.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

No particular requirements apply to sponsorship agreements relating to esports tournaments. Such agreements are not explicitly regulated and can be concluded as innominate contracts pursuant to the Commercial Code or the Civil Code.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

The capacity to contract and therefore to participate in esports tournaments under Slovak law is generally obtained at the age of 18. In case of younger individuals, the consent of parents or legal guardian with parental responsibility is required.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Advertising regulations on unfair commercial practices are specifically aimed at protecting consumers and minors in Slovakia. General provisions for advertising regulate inter alia, that advertisement may not present or promote violence, vulgarities or anything that may threaten physical or mental health. Also the respective provisions of the Consumer Protection Act regulate that the advertisement has to fulfill certain conditions so it is not considered to be an unfair commercial practice. For instance, the advertisement may not be alluring or hidden, which may cause confusion of the consumers, who would then make an economic decision that they would not otherwise make.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

The selection of the participants has to be objective, transparent and non-discriminatory with pre-known criteria capable of creating a sufficient framework for the tournaments. For instance, the participants may be required to bring their own computer sets with other accessories. The players can be randomly checked for using unauthorized software or third-party programs that may change the features of the games or favor certain players over others. In any case, the use of alcoholic beverages during the tournaments shall be prohibited.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

Currently, no particular requirements for T&Cs of esports tournaments are explicitly regulated mainly due to the fact that esports are not recognized under Slovak law. However, the T&Cs have to comply with the applicable legal regulations of the Slovak Republic in general, in particular the consumer protection laws, the applicable intellectual property laws and data protection laws.

The esports tournaments are organized by entrepreneurs on the basis of free trade licenses issued by the competent authorities.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

In general, the requirements are set forth by the consumer protection laws and it is advisable to determine the requirements for the selection of winners and award of prizes in the applicable T&Cs of esports tournaments. The conditions of the T&Cs of esports tournaments have to be transparent for all the participants before they enter the esports tournaments. In addition, prior to entering the esports tournaments, information on the process of selection of winners (e.g. by random draw), determination and award of prizes must be provided.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

The organizers can enforce the contractual provisions in the applicable T&Cs of esports tournaments. Sanctions may be imposed depending on the seriousness of the violations. For instance, the organizers

may impose minor sanctions such as deduction of points or termination of the game, up to more serious sanctions such as disqualification from the tournament or a permanent ban on participating in the tournaments.

Nevertheless, the organizers can also initiate proceedings against the players involved in illegal gambling or corruption as such unlawful conduct may trigger criminal liability.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There are no specific legal restrictions on the type of prizes that can be awarded. The T&Cs shall determine the type of the prize. From the consumer protection point of view, the prizes have to correspond to those prizes which were announced in the T&Cs. The prizes have to be legally distributable types of prizes (no alcohol, tobacco, weapons, etc.).



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

No. However, due to the ongoing COVID-19 pandemic certain restrictions for the land-based esports tournaments may apply, which may change depending on the current epidemiological situation. For instance, obligation to wear protective face masks that protect the respiratory tract, availability of disinfectants, 2 meter safe distance between the persons, etc.

Currently, a maximum limit of 1,000 persons is set for any gatherings.



## Other local requirements

### Are there any other key local requirements?

Currently no specific local requirements are regulated as under Slovak law, there is no regulation of esports tournaments per se. It is however necessary to avoid a situation where an esports tournament could fall under the regulated gambling games regime. In this respect, we point out that players should not be allowed to bet on match results as in such cases, the players do not actively participate in the esports but instead, bet on the results of a game. Consequently, such activity would clearly fall within the gambling regulation.

As a consequence, a deeper review of the mechanics of esports tournaments is necessary to avoid challenges.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Currently, no specific timing has to be observed.



## Translations

### Are the terms of the esports tournament required to be translated by law?

From a consumer protection point of view, the T&Cs and other related documentation must be in the Slovak language.



## Penalties for non-compliance

### What are the penalties for non-compliance?

In the case of breach of the obligations set forth by the Consumer Protection Act, the supervising authority may impose a fine up to EUR66,400 or up to EUR166,000 for repeated infringements within 12 months.

In the case of breach of the obligations set forth by the State Language Act, the supervising authorities may impose a fine up to EUR2,500.

For breach of personal data processing rules fines up to EUR20 million or 4% of the entity's worldwide annual revenues may be imposed.

Other sanctions and fines can apply in case of breach of the Slovak Gambling Act.

## Key contacts



### Michaela Stessl

#### Country Managing Partner

DLA Piper Weiss-Tessbach  
Rechtsanwälte GmbH,  
Organizačná Zložka  
T +421 2 5920 2142  
michaela.stessl@dlapiper.com



### Daniela Koncierova

#### Senior Associate

DLA Piper Weiss-Tessbach  
Rechtsanwälte GmbH,  
Organizačná Zložka  
T +421 2 59202 113  
daniela.koncierova@dlapiper.com

# Slovenia



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

The Gambling Act (Official Journal No. 14/11, as amended; *Zakon o igráh na sreèò*), partially applicable

## With regard to the applicability of prize promotion regulations to esports activities

-

## With regard to the advertisement of esports related activities

The Consumer Protection Act (Official Journal No. 98/04, as amended; *Zakon o varstvu potrošnikov*) (defines misleading advertising as unfair commercial practices in accordance with The Consumer Protection against Unfair Commercial Practices Act)

The Consumer Protection against Unfair Commercial Practices Act (Official Journal No. 53/07; *Zakon o varstvu potrošnikov pred nepoštenimi poslovnimi praksami*) (Unfair commercial practices)

Electronic Commerce Market Act (Official Journal No. 96/09, as amended; *Zakon o elektronskem poslovanju na trgu*)

## With regard to the protection of intellectual property rights as part of esports activities

Copyright and Related Rights Act (Official Journal No. 16/07, as amended; *Zakon o avtorskih in sorodnih pravicah*)

Industrial Property Act (Official Journal No. 51/06, as amended; *Zakon o industrijski lastnini*)

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR Regulation)

Personal Data Protection Act (Official Journal No. 94/07; *Zakon o varstvu osebnih podatkov; ZVOP-1*) – pre-GDPR, partially applicable



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Esports are not explicitly regulated in Slovenia, so there are no specific rules about this available. We deem however that as long as the tournaments physically take place abroad, the Slovene national laws are not enforceable. In case the tournament would on the other hand be organized online and would either target the Slovene consumers or would be available to them, then the Slovenian national laws could be enforceable also against such entity operating abroad.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Slovenia and there is no dedicated legal or regulatory regime applicable to esports. There is an increasing amount of public discussion regarding the topic in the past months.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

Esports are not explicitly regulated in Slovenia and accordingly there are also no specific rules regarding certification used as part of esports tournaments available.

We expect that more detailed Slovenian regulation will be adopted. According to the current public debate, such regulation would include certain criteria as to when a certain game classifies as a game of chance or an esports.

If esports will be recognized as conventional sports, further regulations would apply.



### Sponsorship of esports tournaments

Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

Esports are not explicitly regulated in Slovenia and accordingly there are also no specific requirements for sponsorship agreements relating to esports tournaments. Broader regulation governing sponsorship agreements as well as the mandatory rules of Slovenian law would apply.



### Participation of minors in esports tournaments

Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

According to the general principles of Slovene law, a person who is 15 years old or older can enter into legal transactions independently, provided that such transactions do not significantly affect a person's life before or after the legal age (i.e. 18 years). Also, the applicable data protection regulation in Slovenia, currently the GDPR, provides for certain specific conditions regarding the consent for the processing of data given by a person younger than 16 years. It is thus advisable to acquire parental consent for the participants younger than 16 years.



### Consumer Protection – advertising

Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

No specific regulation or case law relating to videogames exists, therefore general regulation regarding advertising and consumer protection applies.

Please note that the Slovenian authorities have taken no official position in relation to micropayments or loot boxes in videogames.



### Selection of participants

Is it possible to place any restriction on the players that can participate in an esports tournament?

Esports are not explicitly regulated in Slovenia and accordingly there are no specific restrictions to the players that can participate in an esports tournament available, but generally speaking the criteria of selection of participants needs to be objective, transparent and non-discriminatory.



### Participation in esports tournaments

Can players pay an admission fee to participate in esports tournaments?

Esports are not explicitly regulated in Slovenia and accordingly there are also no specific rules on the price players have to pay to participate in esports tournaments available. As long as such a price would be compliant with the applicable consumer laws and the structure of the tournament does not resemble a game of luck, the associated risks are rather low.



### Contracting esports players

Are there particular requirements for t&cs of esports tournaments?

Esports are not explicitly regulated in Slovenia and accordingly there are no requirements for the T&Cs of esports tournaments available, but generally speaking they shall be drafted in accordance with Slovenian consumer laws.

Additionally, any type of gambling mechanisms should be strictly avoided. The Financial Administration of the Republic of Slovenia monitors whether the relevant tournaments abide by this limitations.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

Esports tournaments are not explicitly regulated in Slovenia, so there are no specific rules regarding the requirements for the selection of winners and award of prizes. General contract and consumer law rules will thus apply to the proper selection of winners.

It has to be noted however that it is imperative that the winners are selected and prizes distributed solely based on the skills and consequently success of such participants. As soon as the element of chance or another uncertain event is involved with selection of winners and award of prizes, such tournament could be regarded as a game of chance and the gambling regulation would accordingly apply.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Esports tournaments are not explicitly regulated in Slovenia, but organizers can enforce contractual provisions set out by the T&Cs of the tournament. We deem that an organizer can deny the participation to such individuals or disqualify them during the tournament. It is important that such rules are defined and published in a timely manner. Moreover, caution with regard to the avoidance of discrimination is advised.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

Esports tournaments are not explicitly regulated in Slovenia, so there is no restriction on the type of prizes that can be awarded as part of esports tournaments available.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

Neither online nor land-based esports tournaments are explicitly regulated in Slovenia, so there are no specific rules available.



## Other local requirements

### Are there any other key local requirements?

As esports are not explicitly regulated in Slovenia, there are no other specific key local requirements. However, games of chance, including but not limited to betting on the esports games, are subject to Slovenian gambling regulation. The Slovenian Gambling Act regulates the system of games on chance, which is a game where the outcome of the game is solely or principally dependent on chance or some uncertain event. Because esports are solely dependent on the skills of the players playing the game, Slovenian Gambling Act is in our view not applicable. Since esports are not explicitly regulated in Slovenia, we however cannot confirm this with certainty. There is generally no jurisprudence or other literature available in Slovenia concerning this topic and also no clear standpoint of the authorities is available. In the past they even went in the direction, that esports could be a game of chance. However, esports tournaments are currently being organised in Slovenia and seem to be tolerated (if not approved) by the Slovenian authorities. It should however be noted that betting on the esports games is subject to Slovenian gambling regulation.

Detailed review of the mechanic of esports tournaments is advisable to avoid any challenges and ensure compliance with the local rules.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

Esports are not explicitly regulated, therefore no specific rules on this subject are available.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

Esports tournaments are not explicitly regulated in Slovenia but under general Slovenian consumer regulations, the information intended for consumers and users in Slovenia shall also be shown in Slovenian language.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

Esports are not explicitly regulated in Slovenia, therefore no specific penalties for non-compliance are prescribed. There are however penalties in case of betting on esports tournaments. In case of breach of gambling laws, misdemeanour sanctions will apply in the form of fines and in certain cases additionally with the confiscation of objects that have been used or intended for a misdemeanour. Organizing illicit gambling can also impose criminal sanctions.

## Key contacts



**Jasna Zwitter-Tehovnik**

**Partner**

DLA Piper Weiss-Tessbach  
Rechtsanwälte GmbH  
T +43 1 531 78 1042

[jasna.zwitter-tehovnik@dlapiper.com](mailto:jasna.zwitter-tehovnik@dlapiper.com)



**Domen Brus**

**Associate**

DLA Piper Weiss-Tessbach  
Rechtsanwälte GmbH  
T +43 1 531 78 1848

[domen.brus@dlapiper.com](mailto:domen.brus@dlapiper.com)

# South Korea



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

The answers to the following questions were prepared based on the laws specifically applicable to esports, rather than introducing the laws and regulations relevant to the overall game industry.

## With regard to the applicability of gambling laws

### National Sports Promotion Act

Article 48, No. 3, No. 4 provides criminal sanctions for the illegal offering of gambling and betting activities.

### Criminal Act

As Article 246, Paragraph 1 provides that a person who commits the offense of gambling shall be punished, a person who commits the offense of gambling on the outcome of a game may face criminal punishment.

### Act on Special Cases Concerning Regulation and Punishment of Speculative Acts, etc.

Article 2, Paragraph (1), Sub-paragraph 1 defines speculative act as any act to cause gain or loss of property by collecting goods or property gains from a number of people and by determining the gain or loss by coincidental means.

## With regard to the applicability of prize promotion regulations to esports activities

### Game Industry Promotion Act

According to Article 28, Sub-paragraph 3, a game product-related business entity shall not promote speculation by offering free gifts, etc.: provided, however, juvenile game providing business entities shall be exceptionally permitted to offer limited types of free gifts including toys for game products permitted for use by all ages.

Public Notice on Free Gifts ("not exceeding KRW 20 million, the total value of free gifts shall be less than 3% of the estimated sales) applied mutatis mutandis to the criteria for the provision of free gifts existed in the past but was repealed on June 30, 2016, and recently a competition granting a reward exceeding the criteria (KRW 30 million) was held (September 2019. ASL).

## With regard to the advertisement of esports related activities

### Game Industry Promotion Act

Article 34, Paragraph (1) prohibits indicating a game product rating different from their actual rating, advertising contents different from those of the game products, advertising contents encouraging a speculative spirit, etc.

## With regard to the protection of intellectual property rights as part of esports activities

### Copyright Act

Article 2, Sub-paragraph 1 provides that copyright of game products shall be protected from other copied game products of which rules and expression methods are similar (Supreme Court Decision 2017Da212095 rendered on June 27, 2019 – Farm Heroes Saga, Blizzard's affiliate, King.com).

Recently, the court tends to widen the range of objects of copyright protection in terms of game products.

### Trademark Act

According to Article 35, the first person who files an application for trademark registration may obtain such trademark and protection thereof accordingly (Supreme Court Decision 2003Hu649 rendered on June 9, 2005; StarCraft Trademark Case).

Riot Games, Inc. has registered trademark for the name of its esports leagues: LCK (Korea), LEC (Europe), LPL (China) and LCS (Northern America) in 2019.

### Game Industry Promotion Act

Article 13 contains the provision for protecting and fostering creative activities related to games as intellectual property rights.

## With regard to the processing of personal data as part of esports activities

### Personal Information Protection Act

This Act provides regulations on matters in relation to handling and protection of personal information, and regulations on criminal punishment in the event of unauthorized leakage of personal information.



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Overseas business entities operating abroad shall comply with the law of the Republic of Korea ("Korea") when offering game services or tournaments for gamers or users of Korea.

Whether or not the relevant game service is actually being provided for users of Korea is decided in comprehensive consideration of (1) whether the relevant game is being offered in Korean language; (2) whether payment in KRW is available for the relevant game; (3) whether the inflow of Korean users is blocked; (4) whether promotional activities are targeted on Korean users; and (5) whether the relevant game is operating a website in Korean language, and if Korean users are using the game service without any special restrictions, the laws and regulations of the Republic of Korea can be deemed applicable.

Indeed, there is a case of a foreign game which was shut down by the Korea Communications Commission for not complying with the Korean law.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

From the Korean law perspective, esports is not recognized as sports. The term "sports" is defined in Sports Industry Promotion Act as 'any sociocultural behavior, mainly featuring physical activities conducted on a voluntary basis to maintain a healthy body and develop a sound mind for the purpose of improving the quality of life', but it does not include esports. There exists a separate law for esports, the Act on Promotion of E-Sports, which takes precedence over other laws in relation to the promotion of esports.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There are no exclusive certification procedures only applicable to esports tournaments. However, with respect to game rating, if speculative elements

are added to any tournament, that is, for example, if the amount of tournament entry fee or prize is set excessively, the relevant game may be re-rated.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no particular requirements or regulations applicable to esports tournaments sponsorship.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Article 34, Paragraph (1) of the Game Industry Promotion Act prohibits indicating a game product rating different from their actual rating, advertising contents different from those of the game products, advertising contents encouraging a speculative spirit, etc. However, we understand that there have been few cases concerning the foregoing provision. esports The Fair Labeling and Advertisement Act, which is the general law governing advertisements, can apply if there is a false, exaggerated, and deceptive advertisement, and such advertisement misleads consumers and undermines fair trading.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Entry fees are not used in covering tournament costs and are actually used as the prize money for the winner, and in the event that the amount thereof is excessive and the winner or winning team is decided depending on accidental variables, the relevant tournament may be deemed to constitute a speculative act or gambling.

In this regard, in order to reduce such risk, it is worth considering a way of not receiving entry fees from participants.



### Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

There is no general restriction on the participation of minors in esports tournaments. However, pursuant to the Juvenile Protection Act, Internet game service providers (generating KRW 30 billion or more of annual sales) cannot service Internet games to juveniles under the age of 16 between 12 am and 6 am. This is called the mandatory shut down system and also applies to esports players. At the end of last year, there was a scandal among a certain esports team and its players, which raised nationwide attention to the unfair terms and conditions between esports teams and their minor players. Consequently, the government recently proposed the draft standard contract for esports players and is seeking public feedback. The draft standard contract contains clauses specific to minors, such as, the hour limits on minors' participation in esports per week, the right to study, the right to sleep and rest, and other protections to ensure their health.



### Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

There are no particular requirements for the terms and conditions of esports tournaments.



### Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

There are no specific regulations and provisions on the selection of winners and award of prizes for esports tournaments, but such selection shall be made in a transparent and fair manner according to the relevant contracts and tournament rules.

If a winner is not decided in a fair manner, the participants may take a legal action, such as a civil claim for damage compensation, against the relevant organizer.



### Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

There are no particular regulations on the eligibility of players who can participate in esports tournaments, but the organizers shall determine such eligibility in accordance with transparent and fair standards. For example, it is worth considering a way to determine player eligibility by prohibiting minors under the age of 16 from participating in a tournament according to the shut-down system.



### Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

The organizers may file a criminal complaint against players involved in match-fixing, corruption or illegal gambling during a tournament on grounds of business interference by fraudulent means and corruption, fraud, the violation of the National Sports Promotion Act, etc. and may request the Korea e-Sports Association to ban such players from playing for life.

In fact, there is a case in which players faced criminal charges for match-fixing, etc. and were banned by the Korea e-Sports Association from playing for life (Changwon District Court Decision 2016GoDan4257 rendered on May 11, 2017).

However, since there are limitations when the organizers directly impose sanctions against players involved in match-fixing, etc. without undergoing legal proceedings, it is worth considering some measures, such as, specifying a clause that any person violating the provisions of a contract or tournament rules shall be disqualified from participation.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

There are no particular restrictions on the type of prizes that can be awarded during esports tournaments. However, regulators regarding game products determine that the prize money paid in a tournament held for a certain period of time targeting ordinary people is considered as a free gift and thus if the prize money is excessively high, the tournament may be deemed to constitute an act that encourages speculation, and in this case, certain rules may be applied in accordance with the Act on Special Cases Concerning Regulation and Punishment of Speculative Acts, etc.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

There are no particular different regulations applicable to online esports tournaments compared to land-based esports tournaments.



## Other local requirements

### Are there any other key local requirements?

There are no particular key local requirements.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

There is no provision specifying specific timing to ensure compliance as far as esports tournaments are concerned.



## Translations

### Are the terms of the esports tournament required to be translated by law?

According to Korea's Act on the Regulation of Terms and Conditions, terms of the contracts for tournament participants and consumers should be written in Korean language. Especially in the case of the esports tournament targeting professional gamers, its rules, prize money, etc. should be written in Korean language for easy understanding, and terms of such contracts should be clearly defined and explained to the participants, and others.

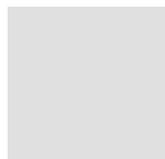


## Penalties for non-compliance

### What are the penalties for non-compliance?

If a person violates the compliance requirements stipulated by a variety of relevant laws and regulations, such as violation of the duty to explain about terms and conditions, etc., the person may face administrative sanctions, such as criminal punishment, administrative fine, business suspension and business closure.

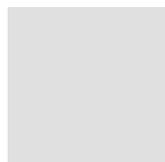
## Key contacts



### Hyun-Ho Eun

#### Partner

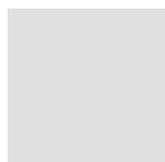
Kim & Chang  
T +82 2 3703 1068  
hheun@kimchang.com



### Brian Tae-Hyun Chung

#### Partner

Kim & Chang  
T +82 2 3703 1078  
thchung@kimchang.com



### Duk-Joong Na

#### Associate

Kim & Chang  
T +82 2 3703 1564  
dukjoong.na@kimchang.com

Spain



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Act 13/2011 of 27 May on Gambling ("LJU").

Order EHA 3079/2011 of 8 November approving the regulations for other fixed odds betting.

Decision of the General Directorate for Gambling Affairs of 11 July 2019 on the prohibition to offer bets on events participated in mainly or exclusively by minors.

## With regard to the applicability of prize promotion regulations to esports activities

Act 13/2011 of 27 May on Gambling ('LJU').

Spanish Consumers' Protection Act RDL1/2007 ('LPCU').

## With regard to the advertisement of esports related activities

Spanish Publicity Act 34/1988 ('LGP')

Spanish Act 3/1991 on Unfair Competition ('LCD')

Spanish Consumers' Protection Act RDL1/2007 ('LPCU').

Self-Regulation Code of Advertising for Gambling Activities of Autocontrol

## With regard to the protection of intellectual property rights as part of esports activities

Spanish Royal Decree 1/1996 on Intellectual Property Rights ('LPI')

Spanish Act 17/2001 on trademarks ('LM')

Spanish Fundamental Act 1/1982 on Image Rights ('LDH')

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ('RGPD')

Spanish Fundamental Act 3/2018 on the protection of personal data and guarantee of digital rights ('NLOPD')



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Entities operating abroad shall comply with Spanish law in the case of esports events addressed to Spanish players and/or consumers, even if they are also open to players and/or consumers of other jurisdictions.

LJU and NLOPD are explicitly drafted to prevent parties based abroad from failing to comply with Spanish regulations in this regard. The same applies to the Spanish Consumers' Protection Act RDL1/2007 when the competition is addressed towards Spain i.e. carried out physically in Spain or the addressee is a consumer based in Spain.

The usage of Spanish wording, the reference to Spain in the T&Cs and other circumstances might be considered by Spanish authorities as indicators of the applicability of Spanish law.

The applicability of Spanish law can lead to significant obligations under the rules, including tax liabilities.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as a sport in Spain and there is no dedicated legal or regulatory regime applicable to esports.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification for the usage of video games in esports tournaments, apart from the certifications necessary for their sale to the public.

The offering of bets on the outcome of esports tournaments is subject to prior license and technical certification.

If esports tournaments are subject to prize promotion regulations, using a previous certified RNG will be recommendable to avoid disputes.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are not any specific requirements applicable to sponsorship agreements for esports tournaments to the extent that these are not considered as a gambling activity. Please note that if the esports tournament falls within the category of gambling activity as defined in the LJU, it could only be sponsored if (i) such activity has been specifically regulated and (ii) approved/licensed under Spanish regulations.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Advertising regulations on unfair commercial practices are specifically aimed at protecting consumers and minors in Spain.

In particular, unlike other jurisdictions, no report/ resolution has been issued yet by the Spanish regulatory body (the General Directorate of Gambling Activities or 'DGOJ') regarding the inclusion of 'loot boxes' in the videogame. However, the paid 'loot boxes' could be challenged as they may be considered as inciting children to make in-game purchases and consequently could possibly have a negative effect on the objective of preventing addiction which contravene the Spanish Gaming provisions.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Payment to participate in or to view an esports tournament – and the amount paid – will be relevant to how the event is treated under general licensing law and the status of the parties under contract and consumer law, as well as the enforcement policy of the relevant regulator and approach of any court.

The existence of payment to enter may also impact on the application of certain gambling law restrictions under the Gambling Act 2005 – but not all e.g. there is no requirement for any money to be staked for an activity to be held to be gaming.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

The capacity to contract and therefore to participate in a esports tournaments under Spanish law is obtained at the age of 18. In case of individuals younger than that age, the capacity to contract for minors is granted to parents or other persons with parental responsibility other than in the cases indicated below:

- Professional players: are linked by an employment relationship, and minimum age for participation is 16 if parents consent – until 18-.
- Non-professional players: for individuals younger than that age, the capacity to contract for minors is granted to parents or other persons with parental responsibility. It is generally accepted that minors over 14 have capacity to contract and therefore could participate on non-professional e-Sport tournaments.

On the other hand, amateur players shall comply with the Spanish regulations regarding the presence of minors on online platforms.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

Criteria of selection of participants need to be objective, transparent, and non-discriminatory.

The Spanish Decision of the General Directorate for Gambling Affairs of 11 July 2019 prohibits the offering of bets on events participated in mainly or exclusively by minors. Therefore, if minors are allowed to participate in esports tournaments, this prohibition should be taken into account in the offering of bets on the outcome of those tournaments.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

T&Cs must appear in Spanish, must be available to the participants before entering the competition and shall be drafted in accordance with Spanish consumer laws, if the tournament is not directed to professional players, and with misleading advertising rules, if the tournament is addressed to professional players.

Additionally, the mechanics of the esports tournament shall be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations and intellectual property laws.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

General contract and consumer law rules, as well as the terms and conditions of each tournament will apply to the proper selection of winners.

Furthermore, if the tournament falls under the prize promotions regulations, these activities require the presence of a public notary, who is in charge of drawing up the minutes of the results of the competition. Also, in such a case, the video game shall be certified to prove the inability to alter its operation.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers can only enforce contractual provisions set out by the T&Cs of the tournament. However, organizers can report the illegal activity to the corresponding authorities who can investigate and impose the corresponding sanctions.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

The absence of an ad hoc regulation for esports tournaments implies that there are no restriction on the type of prizes that can be awarded as part of esports tournaments. Having said this, prizes should be compliant with the applicable consumer laws.

If players are paying in cash to participate in an esports tournament which contains elements of chance and obtain a winning in cash or in kind with economic value, there is a risk of requalification of the tournament as gambling activity, and due to not being specifically regulated, will not be permitted.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

Where the Spanish gambling laws apply, the online esports tournaments can fall under the online gambling licensing regime.



## Other local requirements

### Are there any other key local requirements?

Operators holding a Spanish General Betting License and a Singular license for other fixed odds betting can offer online bets on esports events, within limits set out by these gambling regulations.

Esports are not currently recognized in Spain as sports, and therefore exemptions applicable to them are not applicable. Additionally, there is no dedicated regime applicable to esports.

As a consequence, a deeper review of the mechanics of esports tournaments is necessary to avoid challenges.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Specific timings for the performance of esports tournaments could apply if they are to be considered as a prize promotion. In the case of prize draws (or any other competition where a random element is involved), it is necessary to pay the 10% promotional tax. Preparing and filing the related tax forms with the tax authorities may take a week. Should the sponsor of the competition be based abroad, a Spanish Tax ID for non-residents shall be obtained. The formalities attached to it may take one to two weeks.

If an esports tournament is not to be considered as a prize promotion, no specific timing requests will apply.



## Translations

### Are the terms of the esports tournament required to be translated by law?

Under consumer regulations, the terms of the competition must at least be drafted in the Spanish language. In regional promotions, regional language translations may be mandatory as well (or strongly recommended).

In the case of esports tournaments addressed to professional players, this requirement would not apply.



## Penalties for non-compliance

### What are the penalties for non-compliance?

The LJU establishes fines ranging from EUR100,000 (approx. USD112,000) to EUR1,000,000 (approx. USD1,120,000). Higher fines could be imposed, however, depending on the specific circumstances of the case.

Sanctions under the new data protection regime for infringing data protection law can be very high (the fines could reach of the higher of EUR20 million (approx. USD22.4) or 4% of the global turnover of the infringing company or its group, in the most aggravated cases).

Additional sanctions and fines can apply, depending on the challenged breach.

## Key contact



**Paula González de Castejón**

Partner

DLA Piper Spain

T +34 91 319 1212

paula.gonzalez@dlapiper.com

# Sweden



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

The Swedish Gambling Act (SFS 2018:1138)

The Swedish Gambling Ordinance (SFS 2018:1475)

## With regard to the applicability of prize promotion regulations to esports activities

The Swedish Marketing Act (SFS 2008:486)

The Consolidated ICC Code of Advertising and Marketing Communication Practice

The Swedish Gambling Act (SFS 2018:1138)

## With regard to the advertisement of esports related activities

The Swedish Marketing Act (SFS 2008:486)

The Consolidated ICC Code of Advertising and Marketing Communication Practice

Section 15 of the Swedish Gambling Act (SFS 2018:1138)

## With regard to the protection of intellectual property rights as part of esports activities

The Swedish Act on Copyright in Literary and Artistic Works (SFS 1960:729)

The Swedish Trademarks Act (SFS 2010:1877)

## With regard to the processing of personal data as part of esports activities

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

Section 17 of the Swedish Gambling Act (SFS 2018:1138)

Section 12 of the Swedish Gambling Ordinance (SFS 2018:1475)



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

The rules of the Swedish Gambling Act apply in relation to all games for money and other prizes with a monetary value that is offered in Sweden or directed at the Swedish market, including e.g. prize promotions, online gambling and betting. If such games are offered in Sweden or actively targeting the Swedish market, they fall within the scope of the Swedish Gambling Act. A foreign entity may consequently be subject to Swedish regulations if the Gambling Act is applicable to, or in connection with, an event.

Furthermore, winnings from esports are classified as income under Swedish tax law and a person liable for tax in Sweden may have to pay Swedish income tax on winnings if the amount is over a certain threshold.

The Swedish Marketing Act may also be applicable to an esports event in case any related marketing target Swedish consumers. Applicability will depend on whether the advertisement originates from an EU/EEA member state or from another country. If the advertisement originates from an EU/EEA member state, the marketing regulation in the relevant member state will apply. However, if the advertisement originates from a third country and targets Swedish consumers, the Marketing Act is applicable.

Swedish law may also be applicable to claims both in tort and contract arising from the event. In the case of tort, if damage for an individual occurs in Sweden and in the case of contract, if the main performing party under the agreement has his habitual residence in Sweden.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

Esport is not formally recognized as a sport in Sweden and there is no dedicated legal or regulatory regime applicable to esports. However, Svenska E-Sportföreningen (SESF) a non-profit organization created to support and improve Swedish e-Sports is actively pursuing a formal recognition of esports as a sport in Sweden. Together with a number of other non-profit organizations, the SESF publishes the Swedish esports Code of Conduct, a set of unofficial ethic guidelines for esports players and organizers of esports events.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There are no specific certifications for the use of video games in esports tournaments, provided that the event is not classified as regulated gambling.

Please note, however, that internet cafés and other venues which offer access to computers or video consoles for LAN-games, etc., may require a permit under the Swedish Act on the arrangement of certain games on game machines (SFS 1982:636).



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are not any specific requirements applicable to sponsorship agreements relating to esports tournaments. However, sponsors must comply with applicable marketing regulation such as the Marketing Act.

If the marketing contains information regarding betting or gambling, sponsoring entities must be moderate in their marketing efforts and compliant

with the information requirements in Section 15 of the Gambling Act. In this regard, please note that the Swedish Gambling Act includes an express prohibition against using a gambling operator's name or names of gambling products or services in connection with products intended to be used by individuals under the age of 18.

Both sponsoring entities and the sponsored person will need to consider any potential tax effects from the sponsorship, subject to the type of consideration.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

There are no specific regulations targeting advertising of videogames or sponsorship of esports tournaments and general marketing regulations will apply.

Under the Swedish Marketing Act all marketing shall be consistent with good marketing practice and may not be misleading. Marketing requirements in relation to minors are stricter and any marketing efforts directed towards minors may not counteract positive social behavior, lifestyle or attitudes and it must be clear and transparent that it is marketing. It is also against good marketing practice to take advantage of minors' credulity and lack of experience. Minors may not be pictured in hazardous situations and the advertisement may not encourage violence or the partaking in hazardous activities or otherwise promote violent or dangerous conduct. Advertisers should also provide transparent information as to any payment related matters and ensure that an advertisement does not unduly urge minors to buy the product or otherwise aim to convince children to persuade their parents to buy the advertised product for them.

As many spectators of esports tournaments are likely to be minors and taking into consideration that minors are the main target group for many videogames, organizers of the event, advertisers, broadcasters and/or sponsors will be subject to the more stringent requirements outlined above and will have to design any advertisements accordingly.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

There are not any specific requirements applicable to the participation in tournaments that require payment for participation.

With that said, should the payment be deemed to constitute a bet, wager or similar, there is a risk that the license requirements in the Swedish Gambling Act applies to the event.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

There is no legal minimum age for entering into a competition such as esports tournaments in Sweden and provided that it does not bring any legal obligations on the participant it is not subject to any restrictions. However, minors under 18 years old have a very limited capability to enter into binding agreements by themselves under the Swedish Children and Parents Code. The possibility to contract with minors in relation to tournaments, or for minors to bring legal obligations upon themselves in relation thereto, is consequently limited and will be subject to approval by the relevant minor's parents or caregiver.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

The organizer may select participants freely as long as the selection criteria do not violate mandatory requirements relating to e.g. discrimination or other applicable regulation. An organizer may consequently need to ensure that the selection criteria do not constitute direct or indirect discrimination on the basis of e.g. the participants sex, ethnicity, religion or other belief, disability or sexual orientation.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

If the esports tournament in itself falls within the scope of prize promotion regulation or if the organizer offers bets on the tournament, the T&Cs will be subject to extensive requirements such as the provisions in the Gambling Act. The same conditions must apply to all players.

Furthermore, both spectators as well as players may, depending on the circumstances in a given case, be considered consumers. If so, the organizer must ensure that the T&Cs are drafted in accordance with mandatory consumer regulation.

In all cases, the organizer should take measures to ensure that the T&Cs comply with data protection regulation as well as any regulation pertaining to intellectual property rights.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

The T&Cs or other documents where the relevant rules for the selection of winners and award of prizes are found must comply with Swedish contract law, marketing laws and mandatory consumer regulation.

If the esports tournament is classified as a prize promotion or regulated gambling it is not permissible to select the winner in an arbitrary manner. Information given to the players should include a detailed and unambiguous description of the assignment, and how the winner is to be selected. Furthermore, players must be able to assess the nature and the objective of the competition and the information should include a comprehensive description of the assessment and the decisive factors when choosing a winner.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers themselves can only enforce contractual provisions contained in the T&Cs or other applicable agreements with the players. Sanctions regarding match-fixing, corruption or illegal gambling that are in violation of Swedish law may only be enforced by Swedish public authorities.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

There are no restrictions on the type of prizes that may be awarded barring illegality of the prize itself. The aforementioned also applies to an esports tournament classified as a prize promotion. However, in the case of a prize promotion, information concerning the prizes such as the number, value and type of prize, must be provided before, or at the time of, entry. In these cases, the organizer is also required to provide information regarding whether or not the prize may be exchanged for a cash substitute equal to its value. The organizer must also provide information pertaining to the winner's tax liability.

If participation requires payment of a wager, bet or similar, and the esports tournament includes elements of chance, i.e. if the selection of the winner is not based solely on the participants' individual skills, the tournament may be classified as gambling. In these cases, the organizer is required to have a Swedish gambling license.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

The same regulations apply to both land-based and online esports tournaments. If the tournament is subject to prize promotion regulation, e.g. the Gambling Act will apply as long as the event is provided in Sweden or directed at the Swedish market.

When considering organizing a land-based or online esports tournament, organizers should take into account intellectual property matters.

Organizers of esports tournaments should take into careful consideration any intellectual property matters before organizing the event. Although many game developers in their end user license agreements allow for individual players to stream game footage via third party services such as YouTube or Twitch, the costs for the organizer to obtain a license to stream the game to an, in many cases, uncontrolled audience may be large. Streaming game footage without a license may constitute an intellectual property infringement under Swedish law.



## Other local requirements

**Are there any other key local requirements?**

There is no dedicated legal regime for esports although organizers must comply with general applicable regulations regarding e.g. contracts, consumer protection and marketing. To avoid any complications, organizers should take precautionary measures to ensure that they are compliant with the applicable regulations.

Gambling agents holding a Swedish gambling license may offer bets on esports tournaments within the limits of applicable regulation and under the supervision of the Swedish Gambling Authority.

Furthermore, extensive information requirements concerning e.g. the prizes, T&Cs and tax matters will be applicable if the tournament is classified as a prize promotion.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

There is no specific time required to ensure compliance when organizing an esports tournament. However, organizers should allocate enough time to ensure compliance with mandatory provisions and facilitate proper management of data protection issues such as adopting a suitable privacy policy.



## Translations

### Are the terms of the esports tournament required to be translated by law?

There is no legal obligation for the organizer to translate the T&Cs. However, the organizer as a contracting party will be liable for ensuring that the players participating in the tournament has understood the T&Cs. As such, it is advisable to translate the T&Cs.



## Penalties for non-compliance

### What are the penalties for non-compliance?

Damages to affected parties may apply depending on the circumstances.

Furthermore, if the organizer is in breach of any mandatory provisions e.g. if the organizer is operating or promoting unlicensed gambling activities, heavy fines as well as criminal sanctions may apply. There are currently no set limits for the fines and the Swedish Gambling Authority determines the amount on a case to case basis.

Violations of other provisions such as the Marketing Act may lead to orders or prohibitions under penalty of fines. Such fines may amount to SEK1,000,000 depending on the severity of the transgression. Furthermore, although relatively uncommon, marketing disturbance fees ranging from SEK5,000 to SEK5,000,000 may apply (maximum ten percent of the annual turnover).

## Key contact



**Marcus Gustavsson**  
**Associate, Intellectual Property and Technology**  
 DLA Piper Sweden  
 T +46 8 614 49 11  
[marcus.gustavsson@dlapiper.com](mailto:marcus.gustavsson@dlapiper.com)

# Switzerland



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Federal Act on Gambling (*Bundesgesetz über Geldspiele/Loi fédérale sur les jeux d'argent*) and Federal Ordinance on Gambling (*Verordnung über Geldspiele/Ordonnance sur les jeux d'argent*) providing for a licensing requirement for skill-based gambling if it involves monetary stakes and prizes and if it is run intercantally, online or by automated means, including criminal sanctions for unlicensed gambling activities.

Swiss Code of Obligations (CO) providing that gambling and betting shall not lead to legally enforceable obligations (Articles 513-515a CO).

## With regard to the applicability of prize promotion regulations to esports activities

Federal Act on Gambling (*Bundesgesetz über Geldspiele/Loi fédérale sur les jeux d'argent*) and Federal Ordinance on Gambling (*Verordnung über Geldspiele/Ordonnance sur les jeux d'argent*).

Article 8 of the Swiss Code of Obligations (CO) regarding public prize competitions.

## With regard to the advertisement of esports related activities

Federal Act on Gambling (*Bundesgesetz über Geldspiele/Loi fédérale sur les jeux d'argent*) and Federal Ordinance on Gambling (*Verordnung über Geldspiele/Ordonnance sur les jeux d'argent*), in particular Article 74 of the Federal Act on Gambling and Article 76 et seq. of the Federal Ordinance on Gambling prohibiting intrusive and misleading advertisement for gambling, advertisement directed at minors and barred players as well as advertisement for gambling offered without a license.

Federal Act on Unfair Competition [*Bundesgesetz gegen den unlauteren Wettbewerb/Loi fédérale contre la concurrence déloyale*] prohibiting misleading and deceptive advertisement (Article 3) and the use of general terms and conditions that are unjustifiably imbalanced to the detriment of consumers (Article 8).

## With regard to the protection of intellectual property rights as part of esports activities

Federal Act on Copyright and Related Rights (CopA) [*Urheberrechtsgesetz/Loi sur le droit d'auteur*]

Federal Act on the Protection of Trade Marks and Indications of Source (TmPA) [*Markenschutzgesetz/Loi sur la protection des marques*]

## With regard to the processing of personal data as part of esports activities

Federal Act on Data Protection (FADP) [*Bundesgesetz über den Datenschutz/Loi fédérale sur la protection des données*] and the Ordinance to the FADT [*Verordnung zum DSG/Ordonnance relative à la LDP*]

Article 51 of the Federal Act on Gambling allowing licensed organizers of certain gambling activities to process personal data, including particularly sensitive personal data, for the purpose of protecting players from excessive gambling and combating crime and money laundering.



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Entities involved in the esports sector, particularly organizers of tournaments, may have to comply with certain Swiss laws if they target the Swiss market even if they are domiciled or operating from abroad. In particular, Article 136(1) of the *Federal Act on Private International Law (PILA)* stipulates that Swiss law on unfair competition applies as long as there is an impact on the Swiss market (principle of market impact). Indications for such a targeting of the Swiss market may include, *inter alia*, advertisements specifically targeted at Swiss users, the use of one of Switzerland's official languages (German, French, Italian) and references to Switzerland in T&Cs.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not officially recognized as a sport in Switzerland. The Swiss Federal Office for Sport (BASPO) declared that it does not consider esports to be a sport in the traditional sense. BASPO held that esports constitute a digital, virtual game culture, which is not comparable with conventional sports, since no primary experiences are made in direct contact with other human beings and the environment and the experience instead takes place in a virtually designed space. As pursuant to Article 1 lit. a of the Federal Act on the Promotion of Sport and Exercise (SpoPA), the promotion of sport aims to increase physical activity, BASPO is of the view that esports are not eligible for subsidies under the current legal provisions on the promotion of sport. Furthermore, BASPO reached the conclusion that esports do not meet the legal and ethical requirements of “children and youth sports” due to the often violent content of the games.

However, BASPO also stated that the concept of sport is dynamic and ultimately defined by societal views. Since esports are a relatively new phenomenon and are constantly developing, their legal framework may also be subject to change in the future. BASPO will monitor the developments closely, and reassess its position if appropriate.

Note, however, that the official recognition (or lack thereof) of esports as a sport has no bearing on tax considerations, e.g. the qualification of the income of esports players as self-employed or employed income, social security obligations of esports clubs and VAT obligations of esports organizers.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

As esports competitions are not specifically regulated under Swiss law, there is no designated certification for the use of video games in esports tournaments.

As regards age restrictions for video games, there are no binding federal regulations on age restrictions for video games in Switzerland. However, the vast majority

of manufacturers, retailers, importers and distributors of video games have voluntarily committed themselves to respect the age recommendations of the Pan European Game Information (PEGI) system. Thus, organizers of esports tournaments are well advised to further the goals of youth protection and avoid reputational damage by respecting the PEGI recommendations when selecting the appropriate video games to be played by players of different age groups.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There are no specific requirements in Swiss law for sponsorship agreements relating to esports tournaments.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

While there are no specific regulations that apply expressly in the context of advertisements during esports tournaments, the regular legal framework on advertisements applies (e.g. regarding restrictions on advertisement of alcohol, tobacco, etc.).



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

In principle, esports tournaments may charge players any fee to participate. Note, however, that the charging of a participation fee might qualify as a monetary stake and thus contribute towards the qualification of an esports tournament as skill-based gambling within the meaning of Article 3 lit. a of the Federal Act on Gambling, thus bringing such event within the application of the Federal Act on Gambling. If so, an esports tournament might then, under certain circumstances, require a gambling license.



### Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

Under the Swiss Civil Code, persons under 18 years of age do not have full legal capacity to enter into contracts as required to participate in esports tournaments. As a result, the participation of players under the age of 18 requires in principle the consent of the parents or any other persons exercising parental responsibility (with certain exceptions under specific circumstances).



### Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

As a general requirement, Article 8 of the Swiss Code of Obligations provides that a prize has to be paid out according to the conditions communicated. Thus, the rules of the tournament should be made available to all players in the T&Cs and should be as clear and unambiguous as possible.



### Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

Under the Swiss Criminal Code, a provider of a service intended to be provided to the general public is criminally liable if it refuses to provide the service on the grounds of a person's race, ethnic origin or religion. As a result, the criteria for the selection of players in esports tournaments need to be objective, transparent, and non-discriminatory.

If the Federal Act on Gambling applies, the organizers of the esports tournaments need to comply with the requirements relating to the protection of players from excessive gambling (Article 71 et seqq.). Minors must be given special protection. In particular, under Article 72(1) they are not permitted to participate in so-called "large games" within the meaning of Article 3 lit. e if they are played online.



### Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Such sanctions require that they have been stipulated in the T&Cs between the organizer of the esports tournament and the player. Where such provisions in the T&Cs might qualify as a 'contractual penalty clause' (e.g. if players shall be sanctioned by fines), the provisions in Article 160 *et seqq.* of the Swiss Code of Obligations regarding contractual penalties might be applicable.



### Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

As there is no specific regulation on esports tournaments, there are no particular restrictions on the type of prizes that may be awarded. Naturally, all prizes must be legal, which leads to restrictions in the allowed prizes for minors (e.g. alcohol, tobacco etc.).



### Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

Swiss law does not contain any specific requirements for T&Cs used in esports tournaments, i.e. the general T&Cs related legal concept are applicable, including, inter alia, Article 8 of the Federal Act on Unfair Competition prohibiting the use of general terms and conditions that are unjustifiably imbalanced to the detriment of consumers (Article 8).



### Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

In case of land-based esports tournaments, general public law requirements with regard to the holding of events need to be complied with. This might include

the requirement to obtain a permit to hold the event, a license for use of public ground, the requirement to implement a security concept, etc.

In case of online tournaments, no such requirements will apply. However, as stated above with regard to question 7, the requirements of the Federal Act on Gambling may also apply to online tournaments, depending on the circumstances.



## Other local requirements

### Are there any other key local requirements?

For the potential applicability of the Federal Act on Gambling see question 7 above. For tax considerations see question 3 above. For aspects of youth protection see question 4 above.

An issue that is currently still unresolved is that of the issuance of travel visa for professional and semi-professional esports players from abroad wishing to participate at an esports event. While the US has introduced a visa exemption for esports tournaments in 2013 and Germany in 2019, as of yet no such provisions exist in Switzerland.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

If the esports tournament falls under the Federal Act on Gambling and requires a license, the necessary steps in applying for a gambling license with the competent Swiss authorities need to be taken into account in due time to ensure regulatory compliance.

Additionally, in case of land-based esports tournaments, the required permits set out in question 14 need to be applied for with the competent Swiss authorities in due time.



## Translations

### Are the terms of the esports tournament required to be translated by law?

Under Swiss consumer law, for T&Cs to be enforceable, they have to be drafted so they can be understood by the affected user. Even though users interested in esports tournaments might often be familiar with English, it is advisable to provide the T&Cs, instead or in addition to English, in the official local Swiss language (German, French or Italian).



## Penalties for non-compliance

### What are the penalties for non-compliance?

Non-compliance with the various legal requirements outlined above are subject to different sanctions. Infringements of the Federal Act on Unfair Competition may incur criminal liability in the form of a prison sentence of up to 3 years or a monetary penalty (Article 23). In addition, a violation of the Act (*e.g.* by misleading advertisement) may entitle the injured persons to civil remedies against the organizer of the esports tournament (Article 9 *et seq.*).

If the Federal Act on Gambling is applicable, the organizing of an esports tournament without a license is punishable by up to 3 years or by monetary penalty if the organizer acted willfully (Article 130 *et seq.*).

Depending on the alleged non-compliance, additional sanctions and fines may apply (*e.g.* public law sanctions for non-compliance with public law requirements with regard to the holding of events, see question 14).

## Key contacts

**Dr. Samuel Klaus**  
Partner/Attorney at Law  
LL.M. in Law & Technology  
(Berkeley)

Schellenberg Wittmer Ltd  
T +41 44 215 3695  
samuel.klaus@swlegal.ch

**Roland Mathys**  
Partner/Attorney at Law LL.M. (LSE)

Schellenberg Wittmer Ltd  
T +41 44 215 3662  
roland.mathys@swlegal.ch

# Taiwan



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Article 266 of the Criminal Code, gambling is a criminal offense in Taiwan; providing that a person who gambles in a public place or a place open to the public shall be sentenced to a fine of not more than thirty thousand dollars unless the item for which he gambles is one to provide temporary amusement.

Article 268 of the Criminal Code, providing that a person who intends to make a profit furnishes a place to gamble or assembles a person to gamble shall be sentenced to imprisonment for not more than three years; in addition, thereto, a fine of not more than ninety thousand dollars may be imposed.

Public Welfare Lottery Issue Act, providing the issuing, management, and supervising surplus utilization of the Public Welfare Lottery is regulated to ensure the Public Welfare Lottery is under the purpose of promoting public welfare.

Article 269 of Criminal Code, provide that a person who intends to make a profit operates a prize-giving savings business or issues lottery tickets without permission of the government shall be sentenced to imprisonment for not more than one year or short-term imprisonment; in addition, thereto, a fine of not more than ninety thousand dollars may be imposed.

## With regard to the applicability of prize promotion regulations to esports activities

Article 23 Paragraph 2 of the Fair Trade Act, providing that the competent authority shall enact the regulations with regard to the scope of gifts or prizes, amount of improper offering and other related matters

Fair Trade Commission 19 March 2015, Gong-Fa-Zi No. 10415602341 Decree, enacted the Regulations Governing the Amount of Gifts and Prizes Offered by Businesses pursuant of Article 23 Paragraph 2 of the Fair Trade Act

Article 88 Section 1 Clause 2 of the Income Tax Act provides that taxpayers must pay the tax withheld for prizes of a chance winning.

## With regard to the advertisement of esports related activities

Article 3 of the Consumer Protection Act (Consumer Protection Measures Implemented by Government)

Article 22 of the Consumer Protection Act (Accuracy of the Advertisements)

Article 22-1 of the Consumer Protection Act (Cost of Borrowing of the Advertisements)

Article 23 of the Consumer Protection Act (Media Liability of Misleading Advertisements)

Article 21 of the Fair Trade Act (False or Misleading Representations by Enterprise)

## With regard to the protection of intellectual property rights as part of esports activities

Legislative Decree of 14 May 1928 National Government No. 212 and subsequent amendments to the Copyright Act

Legislative Decree of 6 May 1930 and subsequent amendments to the Trademark Act

Legislative Decree of 29 May 1944 and subsequent amendments to the Patent Act

Legislative Decree of 17 January 1996 Hua-Zong-Zi No. 8500008780 and subsequent amendments to the Trade Secrets Act

## With regard to the processing of personal data as part of esports activities

Legislative Decree of 21 August 1995 Hua-Zong (1) Yi-Zi No. 5960 and subsequent amendments to the Personal Data Protection Act



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

According to Article 4 of the Criminal Code of the Republic of China (Taiwan), Entities operating abroad shall comply with Taiwan law when either the conduct or the result of an offense takes place within the territory of the Republic of China. So if entities abroad constitute crimes abroad, but the result takes place in Taiwan, the Criminal Code of the Republic of China is still applicable.

According to the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements, Taiwan laws are applicable for entities operating abroad under certain circumstances regarding different causes.



### Technical requirements of esports tournaments

#### Is there any regulation according to which esports can fall under the legal category of sports?

According to Article 4 of the Sports Industry Development Act, esports is categorized into “sports industry”, which refers collectively to the sports-related industries that provide products or services necessary for the public to engage in sports or view sports, or that provide supportive services that can promote sports development, and thereby enhance the citizens’ physical and mental health and improve their physical stamina and quality of life.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

There is no dedicated certification for the usage of video games in esports tournaments, apart from the certifications necessary for their sale to the public.



### Sponsorship of esports tournaments

#### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

According to Article 7 of the Sports Industry Development Act, to boost development of the professional sports industry, governments at all levels and state-owned businesses may make investments in conjunction with the national sports policy and sports industry development plans. The proportion of the shares held as a result of such investments is not permitted to exceed fifty percent.

According to Article 26 of the Sports Industry Development Act, donations in any of the categories or for any of the purposes listed below made by a profit-seeking enterprise may be listed as expenses in accordance with the provisions of Article 36 Subparagraph 1 of the Income Tax Act, and there is no restriction on the amount that may be listed:

1. Donations made to a sports organization registered with the government;
2. For training or supporting sports teams or athletes;
3. For a business unit to organize sports activities for its own employees;
4. Donations made to government agencies and educational institutions at all levels for the acquisition of sports complexes and facilities or sports equipment and goods;
5. For purchasing tickets to sports competitions held in Taiwan and donating those tickets to educational institutions or non-profit organizations, which then donate the tickets to students or disadvantaged groups, respectively.



### Consumer Protection – advertising

#### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

The accuracy of the contents of advertisements is emphasized in the Consumer Protection Act. Traders shall not provide less than what is stated in the advertisements. Also, after the contract is made and entered between traders and consumers, traders shall fulfill the contents of the advertisements of goods or services.



## Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

There is no specific regulation regarding whether players can pay any price to participate in esports tournaments or not.



## Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

There is no specific regulation regarding the selection of winners and award of prizes for esports tournaments.



## Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

Under Article 12 of the Civil Code, the capacity to contract and to participate in esports tournaments under Taiwan law is obtained at the age of 20. In cases of individuals between ages 7 to 20, under Article 77 of the Civil Code, the capacity to contract for minors is granted to parents or other persons with parental responsibility. In the case of individuals under the age of 7, such individuals do not possess the capacity to contract.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

There is no law prohibit organizers from enforcing contractual obligation, including sanctions, set out by the T&Cs of the tournament. If the players are involved in illegal gambling or other criminal activities, the organizers can also report to the competent authority and police.



## Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

There is no regulation on the restriction of players participating in esports tournaments.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

There is no specific regulation regarding the restriction on the type of prizes in esports tournaments in Taiwan.



## Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

T&Cs shall be drafted in accordance with Taiwan's Civil Code and consumer laws.

Additionally, the mechanic of the esports tournament shall be structured to avoid the applicability of gambling laws and shall, in any case, comply with data protection regulations and intellectual property laws.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

Under the laws of Taiwan, online and offline esports tournaments are not legally differentiated.



## Other local requirements

### Are there any other key local requirements?

According to Article 10-2 of The Offshore Islands Development Act, gambling is exceptionally legal under certain circumstances. It requires the application procedures, establishment standards, license issuance, license fees, special gaming tax, relevant supervision and administration, and other such matters concerning tourist casinos shall be separately prescribed by law.

However, the law regulating such have not been enacted. As such, tourist casinos are yet legalized in Taiwan.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

Specific timing for the performance of esports tournaments is not regulated other than the reviewing period of the T&Cs.



## Translations

### Are the terms of the esports tournament required to be translated by law?

According to Article 24, Paragraph 2 of the Consumer Protection Act, Chinese translation/description should be provided to the extent not less comprehensive than those required in the country of origin.

If the esports tournament involves importing commodities, Article 7 of the Commodity Labeling Act regulates that the written words shall be written primarily in the Chinese language and may be supplemented by English language or any other foreign language(s). Where the matter(s) contained in the commodity labeling can hardly be described in a proper manner with Chinese language, such matter(s) may be labeled using internationally accepted words or symbols. Also, Article 8 of the Commodity Labeling Act regulates that when an imported commodity is

introduced for sale on domestic market, labeling and instruction book or sales literature written in Chinese language shall be added to the commodity by the importer of such commodity provided that the contents thereof shall not be simpler or so condensed than the contents of labeling made by the place of origin of such commodity. The name/title and the address of the foreign manufacturer of an imported commodity to be labeled shall not be written in Chinese language.



## Penalties for non-compliance

### What are the penalties for non-compliance?

In case of breach of provisions concerning gambling of the Criminal Code, a person may be sentenced to imprisonment for not more than three years (furnishes a place or assembles) or not more than one year (operates a prize-giving savings business); in addition thereto, a fine of not more than 90,000 NTD may be imposed.

According to Article 42 of the Fair Trade Act, the competent authority may order any enterprise that violates Article 23 to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than 50,000 nor more than 25 million NTD. Shall such enterprise fails to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the competent authority may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than 100,000 nor more than 50 million NTD until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

Additional sanctions and fines and civil liabilities can apply, depending on the challenged breach.

## Key contact

**LiPu Lee**

**Managing Partner**

Formosan Brothers

Attorneys at Law

T +886 (2) 2705-8086 Ext. 515

lipolee@mail.fblaw.com.tw

# Thailand



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

Thai Gambling Act 1935 (as amended) ("**TGA**")

Sub-ordinated legislations issued under the TGA.

Sports Authority of Thailand Act 2015 (as amended) ("**SATA**")

Sub-ordinated legislations issued under the SATA

Policy for esports issued by Thailand E-Sport Federation ("**TESF Policy**")

In general, the TGA prohibits or restricts the arrangement of gambling activities and other similar games which is based on a 'gain' or 'spend' basis. Although the participants do not 'spend' and the arrangement may not fall under the definition of 'gambling', it may be considered as a 'prize promotion event' which is also restricted and controlled under the TGA. A license must be obtained from the competent authority prior to the arrangement of prize promotion events. Skills competition are not subject to any restriction under the TGA, provided that the winner is determined on the basis of skill and not chance.

Although esports have been recognized in the past couple of years and Thailand has many gamers and esports players, it has been controversial if esports should be classified as a 'sport'. Nevertheless, as Thailand aims to send Thai players to participate in esports tournaments arranged by International Esports Federation ("**IeSF**"), the Thai E-Sports Association ("**TESA**") was formed in 2013.

In 2017, the board of Sports Authority of Thailand ("**SAT**") approved the classification of esports as a sport and that it could be registered as a sport association under the SATA. As a result, the TESA has been renamed to the Thailand E-Sports Federation ("**TESF**"). The TESF could arrange for the esports tournaments and also send the players to participate in international esports tournaments. In the last couple of years, various esports teams were formed, esports tournaments were held and the Thailand E-Sports Arena was established.

At present, there is only the TESF Policy issued by the TESF which has been amended from time to time and no code or regulation has been issued. This year (2020) there is a draft bill in relation to esports control ("**Bill**") being proposed with focus on restricting participants under the age of 18 and controls on how esports should be held and conducted (e.g. esports tournament cannot be held at educational institution). The Bill is subject to changes. Despite no firm legislation and regulation, this area is expected to grow rather rapidly in the near future.

## With regard to the applicability of prize promotion regulations to esports activities

The TGA and its subordinated legislations

Under the TGA, a prize promotion event is considered to be an arrangement for complimentary gifts or prizes, awarded to people trying their luck in any manner in the conduct of a business or in the pursuit of an occupation.

Before the establishment of the TESF in 2017, esports would possibly fall under the definition of 'prize promotion event' under the TGA. However since its recognition as a sport, it is no longer restricted under the TGA.

## With regard to the advertisement of esports related activities

Consumer Protection Act 1979 (as amended) ("**CPA**")

Subordinated legislations, including Ministerial Regulation Nos. 3 and 5 issued under the CPA ("**CPA-MR**").

As esports are also considered a competition, when advertising esports events, the arranger must also ensure that it complies with the CPA-MR on regards to restrictions on advertisement (e.g. the following must be specified: (i) method and any conditions; (ii) commencement and end date; and (iii) the type of prize/award and its value).

## With regard to the protection of intellectual property rights as part of esports activities

The Thai Copyright Act 1994 (as amended) (“CA”)

The Trademark Act 1991 (as amended) (“TA”)

The Patent Act 1979 (as amended) (“PA”)

The key intellectual property rights relating to esports are regulated under the CA, the TA and the PA. The CA provides copyright protection over various kinds of copyright work, including (but not limited to) audiovisual, cinematographic, sound and video broadcasting. The TA provides trademark protection over mark, trademark, tradename, service mark, certification mark and collection mark. The TA also regulates the licensing arrangement between trademark owner and the licensee whilst the PA provides patent protection over inventions and designs.

As esports are considered as an online game, it is mainly protected by the CA in Thailand.

## With regard to the processing of personal data as part of esports activities

The Personal Data Protection Act 2019 (“PDPA”).

Notification of Ministry of Digital Economy and Society  
Re Personal Data Security *Standards B.E. 2563 (2020)*  
 (“PDPA-N”).

Although the tentative implementation date of the PDPA is 1 June 2021, it would apply to the organization of esports as the PDPA regulates personal data in Thailand. ‘Personal Data’ means any data pertaining to a natural person that enables the identification of that person, whether directly or indirectly, but specifically excluding data of the deceased. Therefore, esports organiser must comply with the regulation on the handling of Personal Data as prescribed by the PDPA.

The PDPA-N is a notification that effectively sets out the minimum standards of security measure that persons or juristic persons must have in relation to the access and use of Personal Data. This includes but are not limited to user access management control so the Personal Data are accessed only by authorised personnels, and specification concerning authorisation or right to access Personal Data. The PDPA-N is effective from

18 July 2020 to 31 May 2021. This is to ensure that prior to the implementation date of the PDPA, persons or organisations that deal with Personal Data have appropriate securities and controls in place.



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

There are certain laws imposing punishments to an offender even though such offender is located abroad. These laws include the Penal Code, the Computer Crime Act 2007 (as amended) (“CCA”), and the PDPA.

The PDPA will apply to those that offer goods or services to individuals in Thailand (irrespective of whether payment is made by the individuals) and the monitoring of individual's behavior that takes place in Thailand.

The applicability of the CCA and the Penal Code is still debatable and the core criteria in determining the applicability is whether or not there is a legal nexus to Thailand (i.e. whether there are operations, assets or personnel in Thailand in which the authorities can enforce their sanctions against).



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

As mentioned above, the SAT approved the classification of esports as a sport in 2017.



### Technical requirements of esports tournaments

#### Do videogames need any certification to be used as part of esports tournaments?

Under the TESH Policy, games designated by TESH must be games designated in IeSF or AeSF only. If any game service provider wishes to promote its game, TESH would help proposing such game to related authorities (particularly the SAT). TESH manage and control esports which are officially announced and registered in sport

expo (e.g. SEA Games, Asian Games, etc.) and arrange for local government championship. Apart from that, there is no clear regulation or guidance yet relating to this issue; however, it is expected to be issued in the near future now that esports is becoming a heated topic.

 **Sponsorship of esports tournaments**

**Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?**

The TESF does neither open for membership nor allow any organization to use its symbol. Apart from that, there is no clear regulation or guidance yet relating to this issue; however, it is expected to be issued in the near future now that esports is becoming a heated topic.

 **Consumer Protection – advertising**

**Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?**

Thai law is consumer-friendly therefore advertisements must be in accordance to the CPA (e.g. no false or exaggerative statement and no statement causing disunity or is prejudicial to the unity of people).

 **Participation in esports tournaments**

**Can players pay an admission fee to participate in esports tournaments?**

There is no specific restriction or requirement in this area yet. Therefore, so long that it could be proved that the payment made by the players is not for gambling purposes, the price payment is allowed. Apart from that, there is no clear regulation or guidance yet relating to this issue; however, it is expected to be issued in the near future now that esports is becoming a heated topic.

 **Participation of minors in esports tournaments**

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

Currently, there is no restrictions, however the Bill states are providing regulations on the participation of minors (e.g. persons under the age of 18 requires parental consent and persons under the age of 18 cannot compete in first-person shooter (FPS)).

 **Selection of participants**

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

There is no clear regulation or guidance yet relating to this issue; however, it is expected to be issued in the future.

 **Contracting esports players**

**Are there particular requirements for t&cs of esports tournaments?**

There are no particular requirements for T&Cs of esports tournaments.

 **Selection of winners**

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

There is no clear regulation or guidance yet relating this issue; however, it is expected to be issued in the future.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

There is no clear regulation or guidance yet relating to this issue; however, it is expected to be issued in the future. Such sanction could be imposed provided that it does not in conflict with the SATA and the codes/ regulations issued or to be issued by the TESH.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

At present there is no such specific timing required to ensure compliance. This is because there is no clear regulation or guidance for esports arrangement yet; however, it is expected to be issued in the future.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

As esports falls under the definition of 'sport', the prizes to be awarded should be in compliance with the requirements, if any, for the prizes given in other sport tournaments. There is no clear regulation or guidance yet relating to this issue.



## Translations

**Are the terms of the esports tournament required to be translated by law?**

Under consumer legislation and regulations, the information intended for consumers and users must be shown Thai. Further, the license application forms and all supporting documents must be in Thai.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

There is currently no difference for the regulation of online and offline esports tournaments.



## Penalties for non-compliance

**What are the penalties for non-compliance?**

There is no clear regulation or guidance yet for the penalties for non-compliance; however, it is expected to be issued in the future.



## Other local requirements

**Are there any other key local requirements?**

At this stage, esports are still considered new and not broadly recognized by Thai authorities. There is no clear regulation or guidance for esports arrangement yet; however, it is expected to be issued in the future.

## Key contact

**Nahsinee Luengrattanakorn**

Associate

DLA Piper (Thailand) Limited

T +662 686 8534

nahsinee.luengrattanakorn@

dlapiper.com

# Turkey



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

The Turkish Penal Code dated 26 September 2004 w. no. 5237 regulates "arranging a place or facility for gambling" as a crime that is subject to imprisonment. Therefore, gambling is not allowed in Turkey.

Law on Misdemeanors dated 31 March 2005 w. no. 5326 regulates administrative (monetary) sanctions for those who gamble.

The Regulation on Sports Betting (Spor Toto) Authority's Duty, Authority and Responsibility dated 21 December 2008 w. Official Gazette no. 27087 regulates Spor Toto Authority's organization, supervision, licensing and audit duties for sports betting regarding sports competitions organized in Turkey and elsewhere.

Law on the Regulation of Betting and Chance Games in Football and Other Sports Competitions dated 29 April 1959 w. no. 7258 regulates that "organizing fixed odds or pari-mutuel betting or arranging a place or facility for betting on sports competitions" is a crime unless this is done under the authority of Sport Toto Authority.

In that context, Spor Toto Organization or non-governmental institutions which have obtained permission from Sport Toto can organize and operate the betting and chance games in compliance with the Law. However, esports has not been clearly included in this Law's sport definition, so any betting and chance games may not be organized for esports.

The Regulation on Organizing Chance Games on Virtual Environment dated 14 March 2006 w. Official Gazette no. 26108 forbids chance games and gambling virtual environment, but betting and gambling games which have been organized according to – abovementioned – Law w. No. 7258 have not been included in the scope of this Regulation. Betting and gambling games for esports on the virtual environments are also not allowed pursuant to this Regulation.

## With regard to the applicability of prize promotion regulations to esports activities

The Decree on National Lottery dated 06.06.1988 w.no. 320. Under this decree, National Lottery Authority has the exclusive power to organize and plan prize promotions where entrance requires cash or an equivalent monetary value.

Regulation of the Turkish General Directorate of National Lottery on Lotteries and Draws with Non-Cash Prizes dated 4 October 2006 w. Official Gazette no. 26309, regulates rules on how to organize lottery, competition, prize promotions and penalties for non-compliance.

## With regard to the advertisement of esports related activities

Consumer Protection Law dated 28 May 2014 w. no. 6502.

The Regulation on Commercial Advertising and Unfair Commercial Practice dated 10 January 2015 w. Official Gazette no. 29232.

## With regard to the protection of intellectual property rights as part of esports activities

Industrial Property Law dated 10 January 2017, w. no. 6769.

Law of Intellectual Property Rights dated 13 December 1951, w. no. 5846.

## With regard to the processing of personal data as part of esports activities

The Law on the Protection of Personal Data dated 7 April 2016 w. no. 6698.



### Extra-territoriality

Are national laws enforceable against entities operating abroad?

Yes, the rules for esports activities including gambling, prize promotions, data protection and consumer law also apply to entities operating abroad in case events are held in Turkey or target the Turkish Market.



### Recognition of esports as a sport

Is there any regulation according to which esports can fall under the legal category of sports?

There is no esports specific law in Turkey and there is no clear legislation which categorizes esports as a sport.

Having said that, Turkish esports federation **TESFED** was established on 24 April 2018 and is organized under the Ministry of Sports and Youth.

The TESFED defines esports as “any activity attended online or offline through an electronic device personally or as a team”.

Further, there are rules drafted by TESFED regarding esports clubs and esports licenses.



### Technical requirements of esports tournaments

Do videogames need any certification to be used as part of esports tournaments?

There is no specific regulation certification requirement. The Federation makes arrangements at its own discretion in the tournaments it organizes.

ESL rules regulate the esports tournaments organized by TESFED.



### Sponsorship of esports tournaments

Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

There is no special regulation for sponsorship contracts in esports competitions.

The esports Federation is affiliated to the Ministry of Youth and Sports, and the Ministry has published “the Ministry of Youth and Sports Sponsorship Regulation.” Therefore, Sponsorship contracts for esports competitions organized by the Federation should also comply with the said regulation.

This Regulation covers the areas where sponsorships can be accepted, the minimum requirements in sponsorship agreements, the expenses that may be covered by the sponsors and the rights that sponsors may be given.

Please note that in addition to the above, sponsorship contracts must comply with the general contract provisions in the Turkish Obligation Code.



### Consumer Protection – advertising

Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

In terms of advertising in the esports area, general rules about advertising will be applicable. Advertisements must be made to comply with the Consumer Protection Law and The Regulation on Commercial Advertising and Unfair Commercial Practice.

Advertisements should not be deceptive and misleading and should not lead to unfair competition.

Further, please be informed that the advertisements in esports area may be deemed to be targeting or affecting children (ages 0-18) therefore specific rules with regard to ads that target or potentially affect children shall also be considered.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

There is no specific regulation regarding esports tournaments therefore there is no specific rule that prohibits entry fee for players.

It is important to note that for minors, this fee shall be paid or approved by the guardian of the minor.

Having said that, when an entry fee is requested, this tournament may fall under the Regulation of the Turkish General Directorate of National Lottery on Lotteries and Draws with Non-Cash Prizes and an approval shall be obtained from the Turkish General Directorate of National Lottery before organizing the tournament.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

According to Article 9 of TESFED Athlete License, Registration, Visa and Transfer Instruction, the age to start sports and get a license is 6.

Please note that under general provisions, minors (those who are under the age of 18) do not have the capacity to sign agreements which put themselves under a debt. Therefore, for minors, the participation agreements shall be signed or approved by their guardians.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

For tournaments that are organized by TESFED, players who made an application to tournaments must have a license under TESFED Athlete License, Registration, Visa and Transfer Instruction.

The Federation determines the selection of the participants in each competition, depending on the situation and conditions. Criteria of selection of participants must be fair, objective, transparent, and non-discriminatory.

For tournaments that are organized by other parties, it is possible to place restrictions as long as the criteria is fair, objective, transparent and non-discriminatory.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

There are no specific rules with regard to T&Cs of esports tournaments. Under general provisions of law and the Code of Obligations the T&Cs shall be clear, understandable, transparent and fair.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

Obtaining permission or license is not necessary when the winner is picked on the basis of skill or qualification. As long as these conditions are provided, requirements

for the selection of winners and award of prizes can be determined by T&Cs of the tournament. In this context, mandatory provisions in scope of general contract and consumer law should not be breached.

Additionally, criteria and requirements to win must be made available before or at time of entry.

### Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers cannot impose criminal or administrative sanctions against players, these sanctions can only be applied with a court order or administrative decision by officials. However, contractual provisions set out by T&Cs of the tournament can be enforced by tournament organizers. (e.g. ban)

### Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

If the tournaments/competitions do not fall within the scope of the Regulation on National Lottery and the Turkish General Directorate of National Lottery on Lotteries and Draws with Non-Cash Prizes (**"Regulation"**), meaning if there is no entry fee for the tournament, there will not be restriction on the type of prizes. Therefore, cash or non-cash prizes can be given.

If entry fee is obtained from the participants, this is subject to approval of the Turkish General Directorate of National Lottery.

Further, prizes shall be in line with the general principles of law and shall not be against general principles of morality.

### Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

Under the TESFED Regulations, there is no distinction between online and offline esports tournaments.

### Other local requirements

**Are there any other key local requirements?**

Turkey esports Federation has published 3 Instructions:

1. TESFED Referee Instruction which regulates the conduct, authority and duty of referees for tournaments organized or approved by TESFED.
2. TESFED Athlete License, Registration, Visa and Transfer Instruction which regulates the license, registration, visa and transfer of esports athletes that will attend tournaments organized or approved by TESFED.
3. TESFED Private e-Sport Saloons and Adequacy Certificate Instruction which regulates the regulates the physical and organizational requirements of esports Venues.

TESFED specifies that permission is not compulsory for organizing tournaments. However, if any tournament organizer wishes to link the tournament with TESFED, the permission will be required.

### Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

N/A



## Translations

### Are the terms of the esports tournament required to be translated by law?

According to the general provisions of Turkish Law, T&Cs should be clear and understandable for the participants. Therefore, if Turkish participants are targeted, the T&Cs shall be in Turkish.



## Penalties for non-compliance

### What are the penalties for non-compliance?

There are no specific penalties for non-compliance with esports regulations.

In case of breach of gambling laws, criminal sanctions which are imprisonment between 3 years to 5 years and a monetary fine can apply. If this breach has happened in the virtual environment, also the access to website and IPs may be restricted. Additionally, the administrative fine can be applicable for people who gamble and bet pursuant to Misdemeanor Law.

In case of non-compliance with the Consumer Protection Law an administrative fine may apply for up to TRY 104.781 (approx. USD15,600).

On the other hand, if any breach has existed under data protection law or intellectual property law, other sanctions and fines can be applied.

## Key contacts



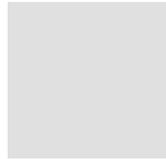
### Burak Ozdagistanli

#### Co-Managing Partner

Ozdagistanli Ekici Attorney Partnership

T +90 216 230 07 52

bozdagistanli@iptech-legal.com



### Hatice Ekici Tağa

#### Co-Managing Partner

Ozdagistanli Ekici Attorney Partnership

T +90 216 230 07 51

hekici@iptech-legal.com

# Ukraine



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

The Law of Ukraine "On Prohibition of Gambling business in Ukraine" as of 15 May 2009 No. 1334-VI

## With regard to applicability of lottery laws

The Law of Ukraine "On State Lotteries in Ukraine" as of 6 September 2012 No. 5204-VI

## With regard to the applicability of prize promotion laws

Civil Code of Ukraine as of 16 January 2003 No. 435-IV

The Law of Ukraine "On Advertisement" as of 3 July 1996 No. 270/96-BP

The Law of Ukraine "On Protection of Customers' Rights" as of 12 May 1991 No. 1023-XII

## With regard to the advertisement of esports related activities

The Law of Ukraine "On Advertisement" as of 3 July 1996 No. 270/96-BP

The Law of Ukraine "On Protection from Unfair Competition" as of 7 June 1996 No. 236/96-BP

## With regard to the protection of intellectual property rights as part of esports activities

Civil Code of Ukraine as of 16 January 2003 No. 435-IV

The Law of Ukraine "On Copyright and Related Rights" as of 23 December 1993 No. 3792-XII

The Law of Ukraine "On Protection of Rights to the Marks for Goods and Services" as of 15 December 1993 No. 3689-XII

The Law of Ukraine "On Protection of Rights to Inventions and Utility Models" as of 15 December 1993 No. 3687-XII

The Law of Ukraine "On Protection from Unfair Competition" as of 7 June 1996 No. 236/96-BP

## With regard to the processing of personal data as part of esports activities

The Law of Ukraine "On Protection of Personal Data" as of 1 June 2010 No. 2297-VI

Typical Order of Processing of Personal Data approved by the Order of Ombudsman as of 8 January 2014 No. 1/02-14



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Ukrainian legislation does not have any specific regulation for esports tournaments as such; at the same time, Ukrainian legislation on skills competitions, gambling, lotteries and advertising may apply to esports tournaments. Based on the complex interpretation of such legislation, it may be applied and enforced with respect to esports tournaments operated by non-resident legal entities, if:

- (i) the esports tournament is being held in the territory of Ukraine, and/or
- (ii) the esports tournament, even if it is operated from abroad (via the Internet regardless of the location of servers), is aimed at Ukrainian players.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Esports are not formally recognized as sports in Ukraine and there is no dedicated legal or regulatory regime applicable to esports.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

Ukrainian legislation does not provide for any requirements for certification of videogames as such. However, videogames must comply with the following main requirements prescribed by Ukrainian laws:

- User interface of software distributed in Ukraine needs to be in Ukrainian language; the volume and content of interface in Ukrainian language shall not contain less information than the one provided in foreign language. In practice, the videogame needs to at least to have an option to switch to a Ukrainian interface;
- Videogames must be compliant with public morality requirements established by the Law of Ukraine “On Protection of Public Morality”. More specifically, video games must be labeled to represent age restrictions if they contain erotic or violent content;
- Videogames must not contain content, which is prohibited in Ukraine, for example, content which popularizes or contains symbols of communist and national-socialist (nazi) totalitarian regimes, etc.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

The following main general requirements established by the Law of Ukraine “On Advertising” will apply to sponsorship of esports tournaments:

- During sponsored events it is only allowed to show the name of the sponsor and its trademark, while the provision of any kind of information of an advertising nature on the sponsor and/or its goods/services is prohibited;
- Producers/providers of goods/services which are prohibited in Ukraine cannot be sponsors. To this point, gambling activity is prohibited in Ukraine. Thus, sponsorship of esports tournaments by organizers of gambling activities would be prohibited;

- Producers/providers of goods/services which are prohibited for advertising in Ukraine (e.g. lotteries organized abroad, certain medicines etc.) cannot be sponsors.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

There are no specific requirements applicable to the advertisement of videogames during esports tournaments. At the same time, general requirements established by the Law of Ukraine “On Advertising” will apply. These are some of such general requirements:

- Advertisement shall not contain information which violates ethical, humanistic, moral norms and propriety standards;
- Advertisement shall represent true information;
- Advertisement of the following goods/services is prohibited:
  - goods and services that are prohibited in Ukraine (eg gambling);
  - goods or services sale/provision of which requires special permits/licenses, if the entity does not have such permissions (eg lotteries organized by unauthorized entities).

Separately, advertisement of the esports tournaments, lotteries, prize promotions must contain the information on the date and place of such events, and details of the information source which contains date, place and T&C of such events. Information on the change of place, time and T&C of such events shall be communicated in the same way as initial advertisement of the events.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Players can pay a price to participate in (i) competitions based on skill or (ii) state lotteries operated by licensed entities. Otherwise, tournaments based on chance which requires payment for participation would be regarded as gambling, which is prohibited in Ukraine.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Individuals aged 18 and above who have full civil capacity, are free to participate in any esports tournaments. In other cases, the following requirements will apply:

- Participation of players aged from 14 to 18 is subject to obtainment of consent from parents or legal guardians of the player (i.e. participant will be the party of the deal with organizer, but subject to consent from his/her parents or guardians);
- If participant is aged below 14, his/her parents or guardians must formalize his/her participation in the tournament on his behalf (i.e. the parent or guardian will be the party to the deal with the organizer on behalf of the participant).

Separately, individuals below 18 years age cannot participate in lotteries.

Finally, age restrictions may apply in a view of public morality requirements established by the Law of Ukraine "On Protection of Public Morality", in particular, in case of presence of erotic or violent content.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

The law does not address placing restrictions on players. Any restrictions should not violate constitutional and other rights provided by Ukrainian legislation and should be clearly stipulated in the T&Cs. According to the Civil Code of Ukraine, the provisions of the T&Cs must be the same for all participants.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

According to the Civil Code of Ukraine, T&Cs for competitions based on skills:

- Must be communicated to the participants at the same time when the competition was announced to public;
- Must contain information on the prize, number of winning places and type of prize for each winning place;
- Must define the term for completion of task/ conducting of some action;
- May only be changed before the competition starts. A change of conditions after the start of the competition is not allowed. The legislation requires information on the timeframes, location of the competition and resources where T&Cs can be found to be included in the advertisement of the competitions, lotteries and prize promotions.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

According to the Civil Code of Ukraine, a winner of a skill competition shall be defined according to the criteria set out by a competition organizer in its T&Cs. Based on the results of a skill competition, the competition organizer may approve one of the following decisions:

- to award all prizes, provided by the T&Cs of the competition;
- to award specific prizes, if several of them were envisioned;
- to refuse the awarding of prizes, if none of the entries meets the requirements of the competition;
- to award an encouragement prize.

The results of the skill competition may be disputed by an interested party in court. No other requirements are established by the law.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

Organizers of esports tournaments can establish specific rules of conduct during the tournament in the T&Cs and enforce them as players' contractual obligations.



## Prizes of esports tournaments

### Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?

Generally, the prizes can be monetary (established and paid in UAH) or in kind, whereas prizes which are in kind shall be allowed for circulation in Ukraine. According to the law, prizes (types, quantity, etc.) shall be defined in the T&Cs of the competition. In this regard, from a consumer protection perspective, the prizes to be awarded must correspond to those prizes which were announced by the organizer in the T&Cs of the esports tournament.



## Online vs. offline esports tournaments

### Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?

No.



## Other local requirements

### Are there any other key local requirements?

Ukrainian legislation does not contain a separate regulation for esports tournaments. At the same time, Ukrainian legislation regulates the following activities, which depending on their mechanics, may represent esports tournaments:

- Competition based on skill – the Civil Code of Ukraine establishes that skill competitions may relate to intellectual or creative activity, commission of a certain

action, performance of work, etc. The legislation establishes some requirements for the T&Cs of competitions, rights of the winners etc.;

- Gambling – the Law of Ukraine on 'Prohibition of Gambling in Ukraine' prohibits gambling activity in Ukraine. The law defines gambling as any game that requires a player to pay for playing (payment can be done by any means, including through any electronic/online payment system), which allows the player either to receive or not receive a prize (in any form) based on chance. According to the mentioned Law, a gambling business is defined as activity related to the organization, conducting and provision of the possibility of access to gambling in casinos, gambling machines, computer simulators, bookmaker's offices and/or interactive facilities, or electronic (virtual) casinos, regardless of the server location.

The law provides an exhaustive list of activities which are not regarded as gambling in Ukraine: organization and conducting of lotteries, organization and conducting of creative contests; billiards, bowling and other games where players do not obtain prizes; prize promotions with advertising purposes; prize promotions in the form of competitions which imply free of charge participation etc.

It is expected that gambling will be legalized in Ukraine. In particular, a new Law on Regulation of Gambling (Gambling Law) that is aimed at legalization of gambling is currently in a process of its adoption. Under the draft Gambling Law, such types of gamble as casinos, slot machines, betting and poker will be allowed in Ukraine. The draft Gambling Law establishes specific requirements to the gambling providers and implies obtainment of a license by the providers to be able to organize gambling in Ukraine. The draft Gambling Law was adopted by the Parliament of Ukraine on 14 July 2020 and is pending signature by the President of Ukraine. The draft Gambling Law is being actively discussed by business and public having both its supporters and severe opponents. Therefore, at the moment there is no certainty that the draft Gambling Law will be signed by the President of Ukraine and, thus, will enter into force in the wording as voted by the Parliament of Ukraine on 14 July 2020.

- lottery – a mass game irrespective of its name, the conditions of which imply prize pool draws among its participants, in which winning depends on chance and where the territory in which it is conducted extends beyond one building, regardless of the method of accepting money to participate in such a game. The law prohibits holding lotteries without a license.

Currently, the application process for lottery licenses is blocked due to the absence of adopted license requirements. Lottery operators operate based on the respective old licenses issued to them prior to adoption of the Law of Ukraine on “State Lotteries in Ukraine”, whereas the order allowing new licenses to be obtained has not been adopted yet.



## Timing

### Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?

There is no such requirement in relation to competitions based on skills or prize promotions. However, such a requirement is established for lotteries – they must be filed by a licensed operator for mandatory state registration with the Unified Register of the State Lotteries within 15 days upon publication of the T&Cs.



## Translations

### Are the terms of the esports tournament required to be translated by law?

Yes, they must be translated in Ukrainian language



## Penalties for non-compliance

### What are the penalties for non-compliance?

The following penalties may be relevant to organizing esports tournaments:

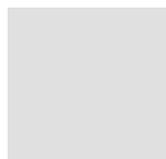
- For non-compliance by advertisers relating to the content of advertisements or regarding the dissemination of such advertisements – fines amount to five times the cost of the distributed advertisement;<sup>36</sup>

- For breach of requirements of the Law of Ukraine “On Protection from Unfair Competition” – fines of up to 5% of business profits (group) for the last year (if profits of the business entity for the last year is not declared – an amount of USD6,115);
- For breach of data protection rules – fines of approximately USD61 – 183.

Penalties related to the prohibition of gambling:

- Penalty established by the Law of Ukraine “On prohibition of gambling” for organizing and conducting gambling – fines for organizers of gambling in the amount of around USD1,359,136 plus confiscation of gambling facilities and all the realized profit which is to be paid to the state budget of Ukraine;
- Criminal liability for conducting gambling business – fines of approx. USD6,115 – USD24,460;
- Administrative liability for participation in gambling – fines of USD2 – 15 plus confiscation of gambling facilities and any property which was a stake in gambling activities. Penalties related to lotteries:
- The Law of Ukraine on “State Lotteries in Ukraine” establishes a fine of approx. USD2,718,273 plus confiscation of gaming facilities for the organization and conducting of lotteries without a license.

## Key contacts



### Natalia Pakhomovska

Partner

DLA Piper Ukraine

T +380 44 490 95 75

natalia.pakhomovska@dlapiper.com



### Ivan Shatov

Associate

DLA Piper Ukraine

T +380 44 490 95 75

ivan.shatov@dlapiper.com

<sup>36</sup> All fines are set in UAH; respective amounts have been converted into USD based on official exchange rate of the National Bank of Ukraine as of 28 July 2020.

# United Kingdom



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

- Gambling Act 2005 s6 – Gaming
- Gambling Act 2005 s9 – Betting
- Gambling Act 2005 s11/339/Schedule 1 – Prize Competitions
- Gambling Act 2005 s12 – Pool Betting
- Gambling Act 2005 s13 – Betting Intermediary
- Gambling Act 2005 s14 – Lottery
- Gambling Act 2005 s16 –18 – Cross-category activities

The Gambling Act largely applies to Great Britain only, separate rules may be held to apply in Northern Ireland.

The Government has the power to provide that a particular activity is to be treated as a sport and outside the definition of gaming. No such designation has been made in respect of esports.

## With regard to the applicability of prize promotion regulations to esports activities

- Gambling Act 2005 – see Lotteries and Prize Competitions above UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code)

## With regard to the advertisement of esports related activities

- UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code)
- UK Code of Broadcast Advertising (BCAP Code)
- Consumer Protection from Unfair Trading Regulations 2008

## With regard to the protection of intellectual property rights as part of esports activities

- Copyright, Designs and Patents Act 1988
- Trade Marks Act 1994

## With regard to the processing of personal data as part of esports activities

- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data
- Data Protection Act 2018



### Extra-territoriality

#### Are national laws enforceable against entities operating abroad?

Under the Gambling Act 2005 (as amended) any offshore operator offering or promoting gambling facilities to UK consumers must be licensed in accordance with UK law. The UK gambling regulator, the Gambling Commission has taken action against entities operating abroad.

In line with applicable jurisdictional law, the UK consumer regulator, the CMA, has taken action under the Consumer Protection from Unfair Trading Regulations 2008 and the advertising regulator, the ASA, has taken action under its Codes, in each case against entities operating abroad which are targeting UK consumers – and/or they have referred matters to equivalent regulators in the home territory of those entities.



### Recognition of esports as a sport

#### Is there any regulation according to which esports can fall under the legal category of sports?

Yes, The Government has the power to provide that a particular activity is to be treated as a sport under section 6 of the Gambling Act 2005. No such designation has been made in respect of esports.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

There is no specific esports certification but a combination of local licensing requirements for public performances (which vary across the UK) and the general law will likely require that video games used in an esports tournament, and the age of the audience gaining access to view them, should be in accordance with the statutory backed framework for video games classification in the UK which has adopted the Pan European Game Information (PEGI) rating system.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

Although the CAP Code has a narrow sponsorship exclusion which applies to the arrangement or contract between the brand and another party, any advertising, promotions or other marketing communications arising out of that sponsorship or containing images from the sponsorship which would otherwise fall within the remit of the CAP Code.

Additional limitations may, however, apply to certain brands and sectors. For example, the Tobacco Advertising and Promotions Act 2002 prohibits sponsorship agreements relating to tobacco products, the Gambling Act 2005 prohibits unlicensed gambling sponsorship and the Portman Group's Code of Practice regulates sponsorship activities undertaken by alcohol brands.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

Any advertising should be in accordance with the statutory backed framework for video games classification regulations discussed above. The UK

consumer regulators, the CMA, at a national/ market level, and Trading Standards, often enforcing at a local level, could take action under the Consumer Protection from Unfair Trading Regulations 2008 and the advertising regulator, the ASA, could take action under its Codes. For example, and regardless of their status under gambling law (which is currently under review in the UK), advertising of loot crate/boxes (but also similar functionality within videogames such as freemium models and in-app purchasing) should comply with guidance issued by the CMA and the ASA.



## Participation in esports tournaments

### Can players pay an admission fee to participate in esports tournaments?

Payment to participate in or to view an esports tournament – and the amount paid – will be relevant to how the event is treated under general licensing law and the status of the parties under contract and consumer law, as well as the enforcement policy of the relevant regulator and approach of any court.

The existence of payment to enter may also impact on the application of certain gambling law restrictions under the Gambling Act 2005 – but not all e.g. there is no requirement for any money to be staked for an activity to be held to be gaming.



## Participation of minors in esports tournaments

### Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?

Licensing and gambling law, as referred to above, as well as the general legal limitations on contracting with minors and in respect of safeguarding, may require that age restrictions must be applied. The UK data protection authority, the ICO, has issued new requirements for online services targeting children which will come into force in 2021.



## Selection of participants

### Is it possible to place any restriction on the players that can participate in an esports tournament?

Licensing and gambling law, as referred to above, as well as the general legal limitations on contracting with minors and in respect of safeguarding, may require that age restrictions must be applied. Other restrictions would need to comply with equalities legislation preventing unlawful discrimination and, if relevant, consumer law.



## Selection of winners

### Are there any requirements for the selection of winners and award of prizes for esports tournaments?

There are no specific requirements for esports tournaments and the requirements will largely be controlled by the contractual arrangements discussed above – which in turn may be influenced by the advertising, consumer and gambling law considerations mentioned. See also the CAP Code requirements for prize promotions.



## Contracting esports players

### Are there particular requirements for t&cs of esports tournaments?

There are no specific requirements for esports tournaments but any contract with a player or tournament/competition contract should set out essential terms such as relationship of the parties, hours, exclusivity, payment, restrictions (including under 6. above), obligations and intellectual property rights. Employment law considerations may be relevant.

Again safeguarding and other issues regarding minors, including general legal limitations on contracting are key.

The CAP Code sets out the requirements which must be included in the T&Cs of any prize promotion. This must include any significant conditions or information where the omission of such conditions or information is likely to mislead. Where relevant, they should also be structured in accordance with consumer and data protection laws.



## Sanctions against players

### Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?

These are key aspects and tournament organizers can and should provide for contractual requirements and sanctions, as well as the appointment of integrity officers to enforce these, in addition to the provisions of the general law prohibiting fraudulent, corrupt or other unlawful activity.

The Gambling Commission has called on the sector to tighten integrity practices. Its Sports Betting Intelligence Unit and Memorandum of Understandings with governing bodies have been key measures to safeguard integrity in other sports. It will be a critical aspect in the further development of esports leagues.

Section 42 of the Gambling Act 2005 prohibits cheating in gambling i.e. an actual or attempted act of deception or interference in connection with the process by which gambling is conducted, or a real or virtual game, race or other event or process to which gambling relates.



### Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

There is no specific restriction on the types of prizes which can be awarded as part of esports tournaments. Depending on the persons competing then certain prizes may be inappropriate or unlawful e.g. alcohol or other age-restricted products awarded to underage competitors.

To the extent the tournament involved regulated gambling, restrictions on prizes for some forms of gambling under the Gambling Act could be relevant.



### Other local requirements

**Are there any other key local requirements?**

As discussed above, esports are not formally recognized under UK law as sports and there is no dedicated legal or regulatory regime applicable to esports.

Accordingly the full range of issues applicable to the development, operation and promotion of live events and the use of interactive entertainment software and services whether in physical premises, online or by a mix of both must be considered in each case. The precise scope and context of these will vary across the relevant stakeholders: players, teams, leagues, publishers, developers, event organisers, sponsors, media partners and fans/audience.

As also described above, key issues around gambling regulatory requirements including betting on esports activities, wider integrity and ethical issues, the protection of individuals and commercial/contractual frameworks must be taken into account.



### Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

There is no specific regulation distinguishing between online and land-based esports tournaments but, as with any online activity, general provisions of UK law relating to online services and e-commerce will apply to the former, whilst premises based licensing/regulations and laws relevant to physical access to them will apply to the latter. Gambling licensing and regulation, for example, distinguish between remote and land-based activities. Relevant intellectual property licensing and content regulation regimes also distinguish between the two. General liability and operational concerns, and measures taken to limit exposure, will vary too.



### Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

Where relevant, specific timing is set out in the CAP Code for promotional activity and the regulated gambling regimes under the Gambling Act 2005.

Other relevant licensing and regulatory requirements, particularly in relation to premises and live events, can involve notice and other time periods, so this must be factored into operational planning and timelines.



## Translations

### Are the terms of the esports tournament required to be translated by law?

English language terms, in plain language for consumer law purposes, will generally be sufficient.



## Penalties for non-compliance

### What are the penalties for non-compliance?

Different potential penalties and applicable enforcement policies apply to each of the legal and regulatory regimes discussed above. For example, where activity falls within the scope of the Gambling Act 2005, there may be fines of up to GBP200,000 and/or imprisonment, the most serious cases of breach under the Consumer Protection from Unfair Trading Regulations 2008 can carry a potentially unlimited fine or a maximum prison sentence of 2 years and breaches of GDPR in relation to the personal data of players in esports tournaments could carry a fine of up to 20 million Euros or 4% of global turnover. This is in addition to general contractual, civil and criminal liability for other unregulated activities that must always be taken into consideration.

## Key contacts



**Duncan Calow**  
Partner  
DLA Piper UK LLP



**Nick Fitzpatrick**  
Partner  
DLA Piper UK LLP



**James McGachie**  
Legal Director  
DLA Piper Scotland LLP

# United States



# Governing law

What are the main applicable governing laws, sports laws or codes for esports (if any)?

## With regard to the applicability of gambling laws

The esports industry implicates a number of laws in the United States that are not specific to the industry itself but are instead triggered by the activities that teams, leagues, sponsors, players, media platforms and other industry stakeholders engage in. Because esports, by definition, involves playing video games professionally, the industry is based on competition. Competition, in the form of both online and offline esports leagues and tournaments, implicates contest and sweepstakes laws, often collectively referred to as “anti-lottery” laws, and anti-gambling laws in the United States. Esports competitions must be structured in a way that mitigates the risk of violating those laws. A gambling operation can legally operate in the United States only if it both operates in a state that allows gambling and is duly licensed by the gaming commission in those states in which it operates. Currently, there is no mechanism in the United States for licensing esports competitions under the gambling laws. So if an esports competition is not structured properly, it will constitute unlicensed gambling. Unlicensed gambling in various forms violates criminal law in the United States. Gambling is principally regulated at the state level. But state law violations can also form a predicate act under various federal criminal statutes, and gambling can constitute an independent federal crime if interstate travel or instrumentalities (most notably phone or wire transmissions) are involved. A violation of the criminal anti-lottery or anti-gambling laws can also constitute a predicate act that exposes the party violating those laws to civil liability.

The most frequently-invoked federal anti-gambling statutes in the United States include: (1) **Illegal Gambling Business Under The Organized Crime Control Act (“OCCA”)**, 18 U.S.C. §1955. This is a federal offense based on violating state anti-gambling laws. (2) **The Travel Act**, 18 U.S.C. §1952. The so-called Travel Act makes it a federal crime to travel or use any facility in interstate or foreign commerce to carry on “unlawful activity,” defined as a business enterprise involving gambling “in violation of the laws of the State in which they are committed or of the United States.” The Act would appear to be limited to the transportation of physical items, but courts have held

“facilities” includes telephone lines carrying gambling information. See *U.S. v. Villano*, 529 F.2d 1046, 1052 n.6 (10th Cir. 1975); *U.S. v. Smith*, 209 F.Supp. 907 (E.D.Ill. 1962). The Travel Act would not apply if no American interstate facility is used, nor if no other state or federal gambling law is violated. (3) **Racketeer Influenced and Corrupt Organizations Act (“RICO”)**, 18 U.S.C. § 1961 et seq. Broadly stated, RICO makes it unlawful to participate in the conduct of an enterprise through a pattern of racketeering activity or a pattern of collecting unlawful debt. Racketeering activity includes any act involving gambling or that is otherwise indictable under, among other statutes, the Wire Act. 18 U.S.C. § 1962(c).

(4) **Professional and Amateur Sports Protection Act**, 28 U.S.C. § 3702. This statute has been declared unconstitutional by the United States Supreme Court, but before it was invalidated, it prohibited sports gambling and provided for **civil** penalties. (5) **Federal Lottery Statutes**, which contain broad prohibitions on importing, shipping in interstate or foreign commerce, or using the U.S. mails for lottery material; (6) **Various State Laws**, with several states having either passed new laws specifically prohibiting online gambling or relying on pre-Internet era laws broadly banning all types of gambling. (7) **The Unlawful Internet Gambling Enforcement Act of 2006** (the “**UIGEA**”), which defined “bet or wager” to mean “the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome”, and provides that no person engaged in the business of betting or wagering may knowingly accept credit or payment in connection with the participation of another person in unlawful Internet gambling (defined as “to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made”). This is a criminal statute and penalties can include fines and imprisonment for up to five years. And (8) **The Wire Act**, 18 U.S.C. § 1084. This law contains two general clauses, with each clause prohibiting two different kinds of wire transmissions as follows: Whoever being engaged in

the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

### **With regard to the applicability of prize promotion regulations to esports activities**

To be legal in the United States, esports tournaments and other competition activity must be structured in a way that complies with (a) federal and state anti-gambling laws [which generally prohibit (i) placing a “bet, stake or wager” (ii) on an event whose outcome is determined predominantly by chance (iii) in the hope of receiving a prize or something of value], and (b) federal and state laws prohibiting illegal private lotteries [generally defined as consisting of (i) a “prize” (i.e. legally defined as just about anything that has measurable value – such as money, a new car, or even a contestant spot on a game show – that is discriminatingly provided to contestants based on chance or their relative merit), (ii) chance (i.e. the selection of a winner through a random drawing or any means other than *bona fide* skill) and (iii) mandatory consideration, which may be monetary or non-monetary in nature (i.e. in order to enter, participants must make a purchase, pay an entry fee, engage in a substantial amount of time or effort, provide personally sensitive information that is not required in the context of the game or for purposes of awarding a prize, or waive a legal right)]. If all three elements exist in an esports competition or in any online, offline or mobile gaming operation, that operation constitutes an illegal private lottery or illegal gambling, which are treated interchangeably for purposes of this Guide.

### **With regard to the advertisement of esports related activities**

- The Federal Trade Commission Act (5 U.S.C. §§ 41-58) prohibits “unfair” and “deceptive” acts and practices.
- The Federal Trade Commission Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR Part 255.

### **With regard to the protection of intellectual property rights as part of esports activities**

The Copyright Act, codified in Title 17 of the United States Code.

The Lanham Act (15 U.S.C. §§ 1051 et seq.) is the primary federal trademark law in the United States. The Lanham Act prohibits a number of activities, including trademark infringement, trademark dilution, and false advertising.

State Franchise Laws and the Federal Franchise Rule (16 CFR Parts 436 and 437) gives prospective purchasers of franchises (including esports teams sold in a franchised league) the material information they need in order to weigh the risks and benefits of such an investment. The Rule requires franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees.

California Talent Agency Act (Cal. Lab. Code §1700 et seq.) prohibits unlicensed talent agents from procuring employment for an artist.

Sherman Antitrust Act (15 U.S.C. § 1) prohibits unreasonable restraints on trade; and unlawfully obtaining, maintaining, or abusing monopoly power.

### **With regard to the processing of personal data as part of esports activities**

The Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6501–6505) and the Children’s Online Privacy Protection Rule (16 CFR Part 312) impose certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age.

State Privacy Laws, including without limitation, the California Consumer Privacy Act (CCPA), (Cal. Civ. Code § 1798.100-199), which creates new consumer rights relating to the access to, deletion of, and sharing of personal information that is collected by businesses. It also requires the California Attorney General to enact regulations that establish procedures to facilitate consumers’ new rights under the CCPA and provide guidance to businesses for how to comply.



## Extra-territoriality

### Are national laws enforceable against entities operating abroad?

Entities operating abroad are required to ensure that their activities in the United States and their online activities that are directed to users in the United States comply with United States privacy, consumer protection and other laws.

other rights in the game. Also the Entertainment Software Rating Board (“ESRB”) provides ratings provide information about what’s in a game or app so parents and consumers can make informed choices about which games are right for their family. Ratings have 3 parts: Rating Categories, Content Descriptors, and Interactive Elements. Organizing an esports tournament for a game title that is rate M for Mature could expose the tournament organizer to a possible regulatory or other claim if the tournament is open to younger players who the game is deemed to be unsuitable for.



## Recognition of esports as a sport

### Is there any regulation according to which esports can fall under the legal category of sports?

No, but in addressing issues like players associations, franchised leagues and college competitions, courts and regulators will likely analogize to laws and legal principles that have been applied to traditional stick-and-ball professional sports. On April 30, 2019, the National Collegiate Athletic Association (NCAA) Board of Governors announced that it had decided against asserting jurisdiction over esports as a college sport. Until that decision, it had been an open question whether the NCAA would exert jurisdiction over esports tournaments held on college or university campuses or between teams affiliated with a college or university in the United States. But the NCAA’s Board of Governors voted to table the issue, allowing third-party organizations to continue developing the space and establishing collegiate leagues and competitions.



## Sponsorship of esports tournaments

### Are particular requirements applicable to sponsorship agreements relating to Esports tournaments?

No specific requirements apply to sponsorship agreements for esports tournaments, but the California Talent Agency Act (Cal. Lab. Code §1700 et seq.) prohibits unlicensed talent agents from procuring employment for an artist and could be implicated by various sponsorship structures that require players to perform certain types of services.



## Consumer Protection – advertising

### Is there any regulation in your jurisdiction that impacts the advertising of videogames during esports tournaments?

No specific laws regulate or prohibit such ads, but such ads will still be governed by general laws that prohibit any advertising from being false or misleading, and courts and regulators scrutinize advertising that is directed at children more closely than advertising that is directed at adults. So if and to the extent the audience exposed to such ads predominantly consists of children, such ads will need to withstand that extra scrutiny, and if the esports tournament is broadcast to a young audience on television, Federal Communications Commission rules limit the type and amount of commercial matter that can be aired in children’s television programming.



## Technical requirements of esports tournaments

### Do videogames need any certification to be used as part of esports tournaments?

No certifications are needed to use video games in esports tournaments, but the game developer and/or publisher controls the public performance rights in the games that they own, so public esports tournaments that are conducted without permission from the game owner risk violating the game owner’s copyright and



### Participation in esports tournaments

**Can players pay an admission fee to participate in esports tournaments?**

Under United States law as currently interpreted and enforced, esports tournament organizers can generally require participants to pay an entry fee to compete, provided the tournament is properly structured as a skill-based competition and the prize pool is structured in a way that prevents the entry fee from being converted into an illegal bet, stake or wager.



### Selection of participants

**Is it possible to place any restriction on the players that can participate in an esports tournament?**

Most esports tournaments are open only to players who are 13 years of age or older. Other criteria for selecting participants need to be non-discriminatory. Services Agreements with players need to be structured in a way that complies with state and federal labor and employment laws.



### Participation of minors in esports tournaments

**Is there any restriction and/or exception applicable to the participation of minors in esports tournaments?**

In many instances, youth are recruited onto esports teams, implicating education requirements, which are regulated at the state level. If the esports team is taking care of the youth athlete, it will be taking on those education obligations as well. For example, in California, minors age six through 15 must attend school full-time. California youth are required to be taught by someone with a California teaching credential for that grade level. The child must be taught for at least 3 hours per day between 8:00 a.m. and 4:00 p.m., for 175 days each school year, in the subject areas required by public schools. And the instruction must occur in the English language. Other states have similar requirements.

Another wrinkle to consider is whether a contract with a minor is enforceable. It is generally understood that persons who are under the age of 18 (or, in some states, 19) are “minors” who are legally entitled to disaffirm their contractual commitments, with certain exceptions tied to basic needs like food, clothing and shelter. That means that many contracts, including services contracts with minors in the esports industry, are voidable at the unilateral election of the minor. As a result, a minor esports team or organization that engages a minor player could in many instances lose that player with little recourse if the player were to simply disaffirm his or her player agreement.



### Contracting esports players

**Are there particular requirements for t&cs of esports tournaments?**

Esports tournaments need to be structured in accordance with United States contest and sweepstakes laws and anti-gambling laws, with long form Official Rules governing participation in the tournament, game play rules describing how the tournament will be scored, short form disclosures that inform prospective entrants about basic tournament information and where they can learn all the relevant information about the tournament, and tax laws and rules governing the prizes that are awarded. Because personally identifiable information and other personal data will be actively and passively collected from players who participate in the tournament, state and federal privacy laws also need to be taken into account in the Official Rules or other T&Cs for the esports tournament, including any qualifying rounds.



### Selection of winners

**Are there any requirements for the selection of winners and award of prizes for esports tournaments?**

The Official Rules for each esports tournament should describe how winners are selected and the prizes that are available. The winner selection protocols must be structured in a way that complies with United States contest and sweepstakes laws and anti-gambling laws.



## Sanctions against players

**Can esports tournament organizers impose sanctions against players involved in match-fixing, corruption or illegal gambling during a tournament?**

Organizers can enforce any such restrictions set out by the T&Cs for the tournament. This activity could also expose the people or entities that participate in such activity to potential criminal prosecution by government authorities.



## Prizes of esports tournaments

**Is there any restriction on the type of prizes that can be awarded as part of esports tournaments?**

Cash and non-cash prizes can be awarded in esports tournaments that are conducted in the United States, but prize restrictions and limitations should be described in the Official Rules for the tournament and tax law and rules may affect how the prize fulfillment is administered and, in particular, whether withholding taxes must be taken out of or otherwise paid for by the winner before the prize is awarded.

If players are paying a cash entry fee to participate in an esports tournament, care must be taken to avoid converting the prize pool into an illegal purse, which would risk converting the entry fee into an illegal bet, stake or wager.



## Online vs. offline esports tournaments

**Are different regulations applicable to online esports tournaments compared to land-based esports tournaments?**

Offline esports tournaments generally implicate the same laws, rules and regulations as online esports tournaments, and vice versa, except some United States privacy laws are technically focused on the online collection of information, as opposed to the offline collection of information.



## Other local requirements

**Are there any other key local requirements?**

Local city permits may need to be secured to both hold a live esports tournament in an offline venue and film or stream the game play and other tournament activity.



## Timing

**Is there the need to comply with specific timing to ensure compliance (other than reviewing the terms and conditions)?**

No



## Translations

**Are the terms of the esports tournament required to be translated by law?**

No



## Penalties for non-compliance

**What are the penalties for non-compliance?**

A violation of the criminal anti-lottery or anti-gambling laws can result in criminal prosecution and can also constitute a predicate act that exposes the party violating those laws to civil liability.

## Key contact



**Benjamin R. Mulcahy**  
Media, Sport & Entertainment  
Partner and Co-Chair of the  
National Advertising Team

T +310 595 3048

benjamin.mulcahy@dlapiper.com

