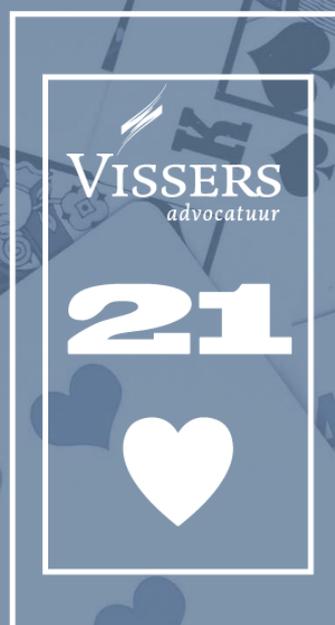


ONLINE GAMES OF CHANCE

- STATE OF AFFAIRS IN THE NETHERLANDS -



Content

Preface	3
General.....	4
Introduction to the gambling legislation	4
Parliamentary discussion	4
System of the act	5
The market	5
Preparations.....	5
Licence application.....	7
Procedure.....	7
Costs.....	7
Requirements.....	7
A – General information	7
B – Reliability.....	7
C – Expertise.....	7
D – Finances	7
E – Consumer protection	7
F – Business processes	7
G - Digital communication	7
Operation	8
Tax.....	8
Payments.....	8
Enforcement	8
Advertising	8
Player verification	8
Player protection	9
Our gambling sector team	10

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Preface

We would like to thank you for your interest in the Dutch market and in our firm. This document comprises three parts. The first part pertains to general information about the Dutch gambling market and deals with the history leading up to the opening of the online games of chance market. The second part provides you with information about the application procedure and the conditions that are imposed on licence holders. The third and final part explains the obligations of licence holders with respect to the actual operation and the compliance to be taken into account.

Before we turn to the developments in the Dutch market and the opportunities that those developments offer for your business, I would like – in so far as this is necessary – to briefly describe our firm to you and how we came to draw up this document.

Vissers Advocatuur has existed for more than twenty years. Our firm is a full-service business law firm with a unique specialisation in games of chance. We have specialised in games of chance since the creation of our firm.

Because of our many years of experience within the gambling market, our firm has unique knowledge concerning the market and the legislation. That is why for many years our firm has been the regular law firm of a large share of the national and international entrepreneurs in the Dutch gambling market and is frequently asked for its opinion concerning matters that pertain to the market.

Our firm has traditionally been involved in particular in land-based developments. Due to the market developments, for some time now our attention has also been focused on the developments that are taking place online. Now that we are slowly approaching the opening of the online market, we are constantly asked to provide information about the state of affairs. We wish to meet this demand with this document.

We believe that the summer of 2020 is the moment to prepare your business for the opening of the Dutch online market. We hope that this document will be helpful in that respect.

If you have any questions, our gambling sector team is ready to be of service to you.

Mr Johan L. Vissers

General

In the first part of the triptych, we will set out the legislative procedure that the gambling legislation has had to pass through in the past few years and will provide insight into the current gambling legislation in the Netherlands and will present a number of basic figures that pertain to the Dutch market.

Introduction to the gambling legislation

Games of chance in the Netherlands are regulated by the Betting and Gaming Act. This act dates back to 1964 and, in spite of a number of amendments, can be described as being somewhat out-of-date. All games of chance are covered by the scope of this act. According to the act, a game of chance is a game where the participant does not have a dominant influence on the final outcome.

The system of the act is fairly simple. All games of chance are prohibited, except with a licence or in case of an exemption on the basis of the act. Briefly put, the following games of chance can be distinguished on the basis of the act: lotteries, slot machines, casino games (Holland Casino) and (sports) betting. In addition to this, there are promotional games of chance and small games of chance for which licences are not mandatory, but which *are* subject to rules.

The act does not contain rules that pertain to offering online games of chance. Online games of chance may therefore not be offered. In order to make it possible to offer online games of chance, the legislator has made a change by means of the Remote Gambling Act (*Wet Kansspelen op Afstand*, or “KOA”).

Parliamentary discussion

KOA has a particularly long history in which the bill was put on hold and sent back a number of times, numerous studies were carried out and many heated political debates took place. On 18 July 2014, the KOA bill was presented to the House of Representatives. Following a political discussion of two years, the Bill was adopted on 7 July 2016. Next, the Senate discussed the KOA.

KOA was adopted on 19 February 2019, after a very difficult debate in which the minister had to make various promises.

A number of motions were submitted and discussed in the Senate, which is relevant to the implementation of the act and subordinate legislation, which has not yet been drawn up.

A motion was adopted which requires the government to review the act and determine whether the act has been a pull factor among young people, and to check whether sufficient measures have been taken to prevent young people from picking up gambling or to prevent gambling-related issues.

The ‘Postema’ motion requested the government to ensure that licences are exclusively granted to parties who have actively and specifically targeted the Dutch market for a period of at least two years while in the possession of a licence (or specifically, those parties that were not *not* in the possession of a licence). This intends to remove any unlawful benefit a party violating the law could have as a result of accessing the Dutch market at an earlier time. The similar motion on a period of five years was rejected by the Senate.

In the second ‘Postema’ motion, the Senate requested to be informed about the criteria used by the government to block websites. The Senate also requested the government to use the so-called *notice-and-take-down-procedure* from criminal law, which allows websites to be blocked quickly. The Senate also requested that the evaluation specifically determine whether the current instruments are sufficient, as this specific measure used to block websites based on administrative powers was removed by the House of Representatives.



7 July 2016



19 February 2019



27 March 2019



1 January 2021



1 July 2021



> 2021

In the 'Van Dijk' motion, the Senate requested a study into the need for advertising for the channelisation or to consider the ban on advertising of (online) gambling. This ban does not only concern remote games of chance, but all forms of gambling. We expect that subordinate legislation on advertising of (online) games of chance will be strict.

The 'Strik' motion, which previously called for an overall ban on advertising remote games of chance, was rejected. The most important reason for this was the intended channelisation, in other words, distinguishing between legal and illegal offerings.

System of the act

KOA is not the legislation that contains all of the rules that your operation must comply with. KOA is only a structural act that contains the most important provisions and provides a basis for the further implementation of the legislation. The rules that will most affect you and your operation can be found in the subordinate legislation. This document is based on subordinate legislation that was already available for inspection before. This subordinate legislation (ministerial regulations and policy rules) is expected to be adopted in the beginning of 2020.

The legislation structure can be represented schematically as follows.



The market

Currently, the Netherlands does not have any licensed parties offering online games of chance. However, this does not mean that there is no Dutch online market at this time.

First of all, various land-based parties are allowed to offer their products and services online. In addition to this, for some time now Dutch consumers have turned to foreign parties offering online games of chance. A recent study has shown that in 2018 1.8 million Dutch people between the age of 18 and 75 took part in online games of chance. The majority of those activities

concerned games of bingo, casino games, poker and sports betting.

The Netherlands Gaming Authority tries to prevent the participation in online games of chance by the use of enforcement. Because the Netherlands Gaming Authority does not have sufficient capacity to take enforcement action against illegal games of chance, it has to choose which parties that offer online games of chance it will take action against first. That choice is made using, inter alia, the following so-called prioritisation criteria:

- making use of the Dutch language;
- making use of a website with the .nl extension;
- making use of means of payment that are used exclusively or predominantly by Dutch people (such as iDEAL);
- advertising in printed media, television or radio, targeting Dutch consumers;
- making use of domain names containing typically Dutch concepts in combination with references to games of chance (such as 'klompenbingo', 'gezelligheidspoker' or 'rood-wit-blauw-casino');
- making use of other Dutch characteristics (such as images of mills or clogs);
- not making use of geoblocking.

These criteria are used to assess whether or not you are targeting the Dutch market and whether or not you should be sanctioned by means of an administrative penalty.

Preparations

The above criteria are important not only in order to avoid a penalty, but they also play a role when it comes to the question of whether or not you fulfil the reliability requirement that KOA imposes on an operator. In case you have organised, without having the relevant required licence, remote games of chance where in the two years, and/or during the application processing period, at least one of the following criteria was met at any point in time:

- the offer occurred in full or in part on a website whose extension ended with .nl;
- the offer occurred in full or in part in the Dutch language;
- the offer or the party offering the games of chance in question was advertised on television, radio or in printed media, targeting the Dutch market;
- one or more domain names were used for the offer, where those domain names contained

typical concepts that referred to the Netherlands in combination with references to games of chance;

- the website(s) on which the games of chance were offered, contained one or more characteristics that suggest that the Netherlands was targeted;
- means of payment could be used for the offered games of chance, where those means of payment are used exclusively or predominantly by Dutch people.

We therefore recommend that you review your current method of operation as soon as possible and adjust it, where necessary.

On the basis of the interest that has already been expressed to it, the Netherlands Gaming Authority expects that approximately 90 licences will be granted. We expect that the application procedure will not take too much time in the beginning in order to ensure that the applicants will be able to start their operations starting 1 July 2021. Once parties have entered the market, the urgency of granting licences in a swift manner is gone and the application procedure may take more time. In connection with this, it would be wise for you to make sure that you submit your application immediately once the application procedure is opened. This means that you will only have this year to make preparations for the application.

Licence application

The Netherlands Gaming Authority has announced what the application procedure for an online licence for games of chance will more or less look like. We have provided an overview below.

Procedure

The procedure commences with the application. The application must be submitted to the Netherlands Gaming Authority. The applications must be submitted in digital form and must be in Dutch. The processing of the licence applications will in all likelihood commence on 1 January 2021.

Costs

The application costs are estimated at € 45,000. Those are the costs paid for the processing of the application. If the licence is not granted, there will not be a refund.

Requirements

Only complete applications will be processed. This means that the application has been filled in fully and truthfully, the identity of the applicant has been established and the costs have been paid. Specific documentary evidence must be provided for all topics of the application.

At this time it is not yet clear which documentary evidence will be required. The Netherlands Gaming Authority will announce this at a later time. It may also concern documents that must be inspected by an independent third party. No inspection body has been designated so far.

The documents that are submitted by the applicant must be submitted in PDF format so that they are directly searchable. The following 7 topics that will play a role in the application procedure *are* already known:

- A. General information
- B. Reliability
- C. Expertise
- D. Finances
- E. Consumer protection
- F. Business processes
- G. Digital communication

These models are detailed schematically below.



A – General information

- Game of chance type
- Legal form of applicant
- Address and contact details



B – Reliability

This part focuses on the integrity of the applicant. Think of a *BIBOB* (Public Administration (Probity Screening) Act) assessment concerning the assets, liabilities, group structures and business collaborations, for example.



C – Expertise

In this part the applicant must prove that managing directors and de facto directors have sufficient expertise. Think of personnel and training policies, for instance.



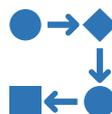
D – Finances

- Player funds solvency
- Continuity of business
- Financial guarantee € 830,000



E – Consumer protection

- Marketing & Advertising
- Advice
- Provision of information
- Player identification



F – Business processes

- Game and ICT system inspections
- Outsourcing & Control
- Business integrity
- Financial audit (Money Laundering and Terrorist Financing (Prevention) Act)



G - Digital communication

This part pertains to the Central Exclusion Register (CRUKS) and the Control Database (CDB). The applicant must connect their system to the CRUKS. The technical conditions are not yet known at this time.

Operation

There is also some information available already with respect to the set-up of your operation and the compliance. In this part we will discuss a number of topics that will affect your operation.

Tax

The current tax rate is 30.1 %. Please note that the tax rate has temporarily (!) (2018 and 2019 so far) been increased from 29% to 30.1%. This increase will no longer apply once the KOA takes effect definitively. The rate of 29% will apply to both land-based as well as remote games of chance 6 months after implementation of the KOA. This is different from the original bill where a distinction was made between land-based and remote games of chance. The rate of 29% will be evaluated three years after entry into force of the KOA. The tax will be levied on the gross game result (stakes less amount paid to player).

Payments

The KOA also introduces legislation concerning payment transactions of players themselves. Those rules do not take the form of primary legislation but of subordinate legislation. A number of considerations to be taken into account are listed below:

- The payment accounts may only be registered in the player's own name and the payment provider must verify that account. Payments must also be transferred on to this payment account/account number.
- Payment transactions must be traceable and payments by means of anonymous means of payment are not allowed.
- Licence holders may not offer credit and player accounts may therefore not be negative. Payments by players may not exceed the limit of their own account. If this does occur, the licence holder must transfer the amount back.

Enforcement

In the Netherlands, the Netherlands Gaming Authority is the market supervisory body in respect of all forms of gambling. The Netherlands Gaming Authority has the following enforcement powers in that respect:

- Administrative penalty (Article 35a Betting and Gaming Act) of, at most, €830,000 or 10% of the annual turnover of the offender.

- Imposition of an administrative enforcement order, which is a measure that aims to end a violation.
- Imposition of an order subject to a penalty for non-compliance, which is a measure that aims to end a violation. If the offender does not do so, a penalty becomes due.

Advertising

Advertising games of chance is also subject to rules. In the most recent Council of State decision, a promotional text was even determined to constitute facilitation of games of chance. This is not permitted in case no licence has been obtained for the game of chance in question. A number of important conditions are set out below:

- Annual reporting of advertising activities and activities used to attract consumers (before 1 April).
- Providing full information about characteristics of game of chance (including, but not limited to, profit determination, costs, addiction, taxation, privacy, profit appropriation).
- No targeting socially vulnerable groups (minors and persons who display high-risk play behaviour characteristics).
- Ban on linear television services advertising and teleshopping messages between 06:00 and 19:00.

Player verification

Identification of the player is very important for combating gambling addiction, among other things. In that context, the licence holder has two obligations. The licence holder must first establish the identity of the player by checking the personal data provided by the player themselves. Next, the licence holder must determine whether or not the identity given was actually provided by the player themselves (by means of a micropayment, for example).

The licence holder processes the Citizen Service Number (*BSN*) of the player for the identification. It may only be used for the registration of the player and must be removed immediately afterwards. Following registration, the player subsequently has to log in using the unique identifier to be provided to them by the licence holder.

Player protection

The Remote Gambling Act introduces two new systems, namely the CRUKS (Central Exclusion Register) and the CDB (Control Database). The CRUKS can be considered a type of door policy that land-based amusement arcades and/or casinos are already familiar with on the basis of self-regulation. If the player is registered in the CRUKS, they will not be able to participate in a remote game of chance. Providers and applicants must be able to prove that they are able to connect to the digital CRUKS system.

The CDB is a system in which the licence holder keeps a database in which the following data is registered, among other things:

- anonymised unique identifier for each player.
- the date, the time, nature of modification and/or overspending of the player's profile.
- date, time and nature of intervention in connection with addiction prevention.
- the date, the time, the amount and the nature of each credit and debit entry of the player's account.
- the total stakes and winnings per game type.

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