

Whitepaper  
ONLINE GAMBLING IN THE NETHERLANDS



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Table of contents

Preface ..... 3

General ..... 4

    Introduction to gaming legislation..... 4

    Systematics of the law ..... 5

    The market..... 5

License application ..... 5

    Procedure ..... 5

    Costs ..... 5

    Requirements..... 5

    A – General information..... 6

    B – Reliability ..... 6

    C – Expertise..... 6

    D – Finances ..... 6

    E – Consumer protection ..... 6

    F – Business processes ..... 6

    G - Digital communication ..... 6

Operation ..... 6

    Tax..... 6

    Payments ..... 6

    Advertising..... 6

    Player identification / verification..... 7

    Player protection ..... 7

    Enforcement..... 7

Our gambling sector team..... 8



## Preface

We would like to thank you for your interest in the Dutch market and in our firm. This document consists of three parts. The first part pertains to general information about the Dutch gaming market and discusses the history of the opening of the online gaming market. The second part provides information on the application procedure for an online gaming license and the conditions imposed on a licensee. The third and final part sets out the obligations of the licensee regarding the actual operation and the compliance to be taken into account once the license has been granted.

Before we take you through the developments in the Dutch market and the opportunities these developments present for your business, I would like to tell you briefly – in so far as this is necessary – about our firm and the objectives of this whitepaper.

Vissers Legal has been in existence for over twenty-five years. Our firm is a “full service” corporate law firm with a unique specialization in gaming and gambling. We have had that specialty since our inception.

Due to our many years of experience within the gaming market, our firm has special knowledge of the market and legislation. It is for this reason that our firm has been the in-house lawyer of a large part of the (inter)national operators in the Dutch gaming market for many years and is frequently asked for its opinion on issues affecting the market.

Traditionally, our firm has been particularly involved in ‘land-based’ developments. For some time now, due to market developments, our attention has also been focused on developments that are taking place online. Since the opening of the online market, we are incessantly asked to provide information on the state of affairs. With this document, we aim to meet this demand.

We would be pleased to help you prepare your company for and make it successful in the Dutch online market. With this document, we give an initial shape to that.

Should 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 this whitepaper, we take you through the journey that online gaming legislation has gone through since its inception and provide an insight into the current gaming legislation in the Netherlands. Finally, we present some figures relating to the Dutch online gaming market.

## Introduction to gaming legislation

Gambling in the Netherlands is regulated by the Gaming Act. This law dates back to 1964 and, despite some recent amendments, can be called somewhat outdated. All games of chance fall under this law. According to the law, a game of chance is a game where the participant cannot exert a predominant influence over the outcome.

The systematics of the law are quite simple. All games of chance are prohibited unless one has a license or exemption based on the law. In short, the following games of chance can be distinguished based on the law: lotteries, slot machines, casino games (Holland Casino) and (sports) betting. In addition, there are promotional games of chance and small games of chance for which no license is required, but which are still subject to regulation.

The Gambling Act did not contain any provisions governing the provision of online gambling. Offering online games of chance was therefore strictly prohibited. In order to allow the provision of online gambling, the legislator made an amendment with the Remote Gaming Act (hereinafter referred to as "KOA"). The KOA Act has entered into force as of 1 October 2021, enabling operators to offer online games of chance, subject to a required online gambling license.

## Development since inauguration

The KOA-act has a particularly long history in which the entry in to force has been delayed several times, mainly due to governmental debate. The KOA-act was submitted to the second chamber of the Dutch government on July 18, 2014, as a proposed law. After a two-year political discourse, the law was passed on July 7, 2016. Subsequently, KOA was submitted to the first chamber for the required approval, as the Netherlands is characterized by a dualistic government.

After a rather cumbersome, debate in which the minister had to make various concessions, KOA-act was adopted on February 19, 2019.

A number of further motions were introduced and debated in the cabinet concerning the implementation of the law and the introduction of lower regulations.

Based on these motions, the following topics have passed the review:

- the magnetic of online gambling on adolescents and whether sufficient measures have been taken to prevent them from getting involved with online gambling.
- the granting of licenses only to parties that in the past have not targeted the Dutch market illegally.
- the criteria used by the Gaming Authority in blocking websites (so-called notice-and-take-down procedure).
- examining the need for advertising for channeling players to the licensed operators or considering ban on advertising for (online) gambling.
- to establish a total advertising ban for remote gambling (was rejected), but the intended channeling idea prevailed.

Since the opening of the online gaming market, the market has been eventful. Criticism follows from many angles and experts regularly voice their concerns. These concerns have now also been widely addressed by the Dutch Gambling Authority. We are observing an increasingly strictly regulated market. We also see this narrowing of regulations in the legislative amendments adopted after the market opened. The following legislative amendments have come into effect or will do so (shortly):

- **30 June 2022:** ban on the use of role models in advertisements (role model: persons of public fame or with whom one wishes to identify or associate).
- **1 January 2023** (has not yet entered into force due to delays. Effective date is still unknown): there will be a ban on untargeted advertising. This includes advertising via TV, radio and in public indoor and outdoor areas. Advertising via the Internet and executive mailing will remain conditionally allowed.
- **1 January 2024:** there will be an outright ban on sponsorship of tv-programs and events.
- **1 January 2025:** there will be a total ban on sports sponsorship. For the time being, sports sponsorship is allowed (to some extent).

What is clear is that more and more is expected of the gaming provider. The market is organic, and the gaming provider must (be able to) facilitate that growth within the legal framework. The Gambling

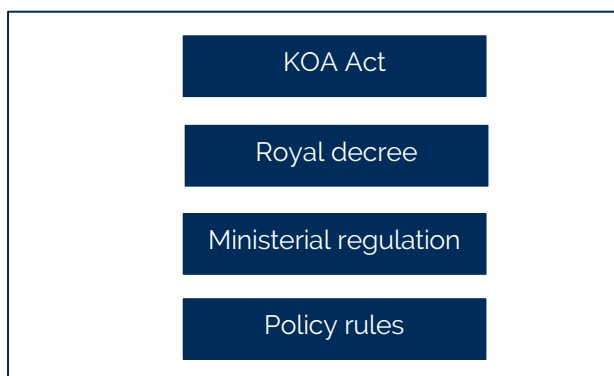


Authority is on top of this and strictly monitors every operator. Even in this growth-driven market, Vissers Legal provides its clients with ongoing (legal) advice, both active and passive.

## Systematics of the law

The KOA-act is not the only legislation which provides the regulatory framework for an online gaming operators. The KOA-act is only a structural/framework law. The rules that most affect you and your operation can be found in the lower regulations. These subordinate regulations (royal decree, ministerial regulations and policy rules) were established in January 2021 and entered into force on October 1, 2021. The (underlying) regulations are subject to regular amendments.

The structure of the legislation can schematically be represented as follows:



## The market

Research shows that in 2018, 1.8 million Dutch people between the ages of 18 and 75 participated in online gambling. These activities were mainly divided between bingo games, casino games, poker and sports betting. Participating in online gambling was however illegal in the Netherlands until October 1st, 2021.

As of April 2021, it is possible to apply for a license for online gambling. With such license, offering online gambling is legal. When the online gambling market opened on October 1, 2021, the Gaming Authority granted 10 licenses. As of September 30, 2022, there were 22 licensees. Nevertheless, the market is expected to continue to expand

The aggregate monthly GGR in 2022 across the market is € 81,400,000.<sup>1</sup>

<sup>1</sup> According to the 'Monitoringsrapportage online kansspelen najaar 2022' as published by the KSA.

## License application

The process for applying for an online gaming license is extensive. Below we provide a brief an schematic overview.

### Procedure

The application process for a permit KOA is extensive and the investigation by the Gambling Authority is thorough. An applicant and its stakeholders must provide full insight into all (!) entities they have and had (in the past 8 years). The preparation time of the application depends mainly on how quickly the applicant can provide the requested information and documentation. For this, the applicant is dependent on third parties (auditors, suppliers). At least several months should be considered. The period from actual application to licensing takes a maximum of 6 months. Applications are digital and must be in the Dutch language. If desired, Vissers Legal can file and/or manage your application digitally.

### Costs

The application costs € 48,000. This is only the cost paid to the Gambling Authority for processing the application. If a permit is not granted, there is no refund.

A burden measurement was last carried out in 2019. From this follows for the permit application a charge of roughly €800,000. For operation in the first year, a charge of roughly €800,000 also follows. These costs are now expected to be lower due to efficiency gains.

### Requirements

Only complete applications will be processed. Meaning that the application is fully and truthfully completed, the identity of the applicant has been established, and fees have been paid. Specific supporting documents must be provided with all subjects of the application. This includes documents that must be audited by an independent third party.

The documents provided by the applicant will need to be provided in a pdf format so that they are instantly searchable. The application consists of 7 parts:

- A. General information
- B. Reliability
- C. Expertise
- D. Finances
- E. Consumer protection



- F. Business processes
- G. Digital communication

These modules are simplified and diagrammed below.



### A – General information

- Extract from the commercial register
- Statutes and organization chart
- Address and contact details

### B – Reliability

This part focuses on the integrity of the applicant. This includes a BIBOB (the legal public administration integrity assessment) investigation of assets, debts, group structure and commercial partnerships.



### C – Expertise

In this section, the applicant must demonstrate that directors and management have sufficient expertise. This includes personnel and training policies.



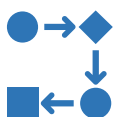
### D – Finances

- Player funds solvency
- Continuity of business
- Financial security of € 50.000



### E – Consumer protection

- Marketing & Advertising
- Provision of information
- Player identification
- Gambling addiction prevention



### F – Business processes

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



### G - Digital communication

This section concerns the Central Register of Exclusion from Gaming (CRUKS)<sup>2</sup> and the Control Database

(CDB). The applicant must connect its platform to the CRUKS.

## Operation

In this section, we take you through setting up your operation and the compliance that will affect your business.

## Tax

The gaming tax has changed a lot in recent years. As of 2023, a 29,5% gaming tax rate will apply (for now). The tax is levied on the gross gaming revenue (GGR).

## Payments

The KOA-act also introduces legislation concerning payment transactions by players themselves. These rules do not take the form of primary legislation but of subordinate regulations. Some considerations to take into account are listed below:

- Payment accounts must be registered in the player's own name and the payment provider must verify that account. Payouts must also be transferred directly to this payment account/account number.
- Payment transactions must be traceable, and payments using anonymous payment methods will not be allowed. Cryptocurrencies are thus not accepted as a payment method.
- Licensees may not offer credit and player accounts may not have negative balance. Deposits made by players may also not exceed the limits set by the player. If they do, this amount must be refunded to the player.

## Advertising

Advertising games of chance is also subject to regulation. The latest ruling by the State Council states that even a recruiting text is tantamount to promoting games of chance. This is not allowed if no license has been obtained for online gambling. Some important conditions are listed below:

- Annual reporting of advertising activities and activities used to attract consumers must be sent to the Gambling Authority.
- Providing full information about characteristics of game of chance (including profit determination, costs, addiction, taxation, privacy, destination of proceeds).

<sup>2</sup> CRUKS is a register operated by the Gambling Authority in which players can be registered who want to be excluded from gambling. Operators are legally required to check every

player on a registration in CRUKS. In case a player is registered the operator has to deny the player access to the (online) casino.



- Socially vulnerable groups (such as minors, young adults and persons displaying characteristics of risky gaming behavior) may not be targeted. This criteria is rather strict. These groups may not receive any (personal) promotional content.

### **Player identification / verification**

Player identification is of great importance for, among other things, combating gambling addiction. In this context, the licensee has two main obligations, identification and verification.

### **Player protection**

The KOA-act introduces two new systems, the CRUKS and the CDB. The CRUKS should be seen as a kind of door policy that land-based slot machine halls and/or casinos are already familiar with. A player registered in CRUKS, must be denied entry by the operator. Providers and applicants must be able to demonstrate that they can connect to the digital CRUKS system, offering insight into the digital connection made.

The CDB is a system in which the licensee maintains a database that records, among other things, the following information:

- irreducible unique identifier of each player.
- the date, time, nature of adjustment and/or exceeding the player profile.
- the date, time, and nature of addiction prevention intervention.
- the date, time, amount and nature of each credit and debit to the gaming account
- the total stakes and playing winnings per game type.

### **Responsible gaming**

Responsible Gaming is the umbrella term for all aspects of gaming participation associated with addiction prevention and recruitment and advertising activities. It is one of the main pillars of the Gambling Authority.

In the context of addiction prevention, a gaming operator must appoint a prevention representative, develop policies and cooperate with experts in the field of addiction treatment.

In the context of recruitment and advertising activities, it is required not to target vulnerable groups of persons, such as minors and young adults. Also, its recruitment and advertising activities must not encourage immoderate participation

### **Outsourcing**

An online gaming provider may also use third parties. Activities may be outsourced to third parties. The gaming provider always remains responsible for implementation and outsourcing. Therefore, the gaming provider must take the necessary measures to ensure that a third party complies with all applicable laws and regulations.

### **Enforcement**

The Gambling Authority is the market regulator in the Netherlands with respect to the supply of games of chance. The Netherlands Gaming Authority has the following options for enforcement in that area:

- Administrative fine (Article 35a Gaming Act) of, at most, € 900.000,- or 10% of the annual turnover of the offender.
- Administrative coercion order or penalty payment, a measure aimed at ending a violation. Administrative coercion or a penalty payment follows when a gaming operator fails to comply with the measure.
- Designation, an explanation / regulation by the Gaming Authority that the gaming provider is forced to comply with.
- Official warning, the gaming provider is made aware of the violation by the gaming authority. There are no further consequences at that point.



## Our gambling sector team



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