



# Mergers & acquisitions in the Spanish Gambling Market

WITHOUT THE OPTION TO TRANSFER SPANISH GAMBLING LICENSES **XAVI MUÑOZ BELLVEHÍ**  
 REPORTS ON THE POSSIBILITY OF ENTERING THE MARKET THROUGH ACQUISITION

## The market

The Spanish gambling and betting market was regulated and opened up in year 2011. The market has developed over 12 years and is now quite mature. There are currently around 80 operators holding gambling licenses with around 65 actively offering online gambling and betting services. In 2022 the market closed with a GGR of €962 million, an 18 percent increase on the previous year.

Spain is based on a closed licensing system, which opens up for the allocation of new licenses approximately every 3-5 years, depending on the formal demand from potential new entrants. The last window for Spanish gambling licenses closed at the end of 2018.

Companies interested in obtaining a license in Spain may apply to the Spanish Gambling Regulator (Dirección General de Ordenación del Juego “DGOJ”). Each request would be taken

in consideration in order to assess whether a new licensing window should be opened or not. Since a new licensing window is not expected any time soon and gambling licenses are non-transferable, they can only be acquired or sold in the framework of an M&A transaction. Therefore, any company currently wishing to enter the Spanish gaming market can only obtain a Spanish license by acquiring an existing operator.

The Law provides for three types of licence: General Licence, Singular Licence and Authorisation. Operators holding a General Licence are able to apply for any type of Singular Licences at any time (unlike General Licences, there is not a specific licensing window for Singular Licences as long as the company is already covered by a General Licence).

Each Singular Licence must be granted under the umbrella of a General Licence as shown in table 1. opposite.

The currently applicable taxation is shown in table 2. opposite.

GENERAL LICENSES	BETS	OTHER GAMES	CONTESTS
SINGULAR LICENSES	Fixed odds sports betting	Roulette	Contests
	Fixed odds horse betting	Poker	
	Other fixed odds betting	Baccarat	
	Pool sports betting	Blackjack	
	Pool horse betting	Bingo	
	Pool other betting	Complimentary games	
	Exchange sports betting	Slots	
	Other exchange betting		

Table 1. General vs Singular Licenses

TYPE OF GAME	TAXATION
Fixed odds sports betting	20% on win*
Fixed odds horse betting	20% on win
Fixed odds other betting	20% on win
Pool sports betting	20% on win
Pool horse betting	20% on win
Pool other betting	20% on win
Exchange sports betting	20% on win
Exchange other betting	20% on win
Contests	20% on win
Other games (roulette, poker, baccarat, blackjack, bingo, complimentary games, slots)	20% on win
Draws and promotional games	10% of the prize value

Table 2. Applicable taxes by game type

\* Spanish term equivalent to GGR

The special tax regime applicable to the companies located in the tiny Spanish enclaves of Ceuta and Melilla should be highlighted. These operators benefit from reduced taxation on all games set at 10% on win, representing a 50% percent reduction compared to other operators in Spain. They also have reduced corporate and other taxes.

## M&A OPPORTUNITIES

As we have seen, Spain is based on a closed licenses system so unless a licensing window is opened, the only way to enter the market is through an acquisition process.

In order to structure an M&A transaction in the Spanish online gambling market it is important to understand the following framework:

- i. the direct transfer of gambling licenses is prohibited under Spanish law;
- ii. a merger, spin-off or transfer of a branch of activity is possible with the prior authorization of the Regulator.
- iii. the shares in a company holding a license can be acquired without prior authorization from the Regulator (although we recommend informing the Regulator);

## MERGER, SPIN-OFFS OR CONTRIBUTION OF A BRANCH

These types of corporate transactions require the prior approval from the DGOJ. In the absence of clarity under Spanish Gambling Law on which aspects should be taken into account when considering whether or not to authorize these transactions, the DGOJ considers that the following elements to be considered, in line with the protective purpose that informs the state gambling regulations:

- Whether the operation is robust; the implications that may arise from the use of the transferred licenses by the entity or entities resulting from the corporate transaction;
- Whether the operation may have a negative impact on the development of the gambling activity or on the protection of the players, including the control and supervision of such activity by the DGOJ;
- The possible consequences for the players who have a gaming account with funds in the companies involved in the corporate transaction.
- Full compliance by the resulting companies with all gambling requirements and regulations as set out in the regulations for the latest licensing window.

The DGOJ will require that the authorized corporate operation

is executed within four months of the issuance of authorization, and, in any case, in accordance with the applicable corporate and civil regulations.

Once the transaction has been executed, normally signed in front of a Spanish Notary, all documentation has to be submitted to the DGOJ for final approval.

The DGOJ will require that the beneficiary company of the corporate operation undertakes all possible responsibilities that the operator may have incurred during the exploitation of the licenses subject to transfer. It will also request a commitment to be compliant from the beneficiary company with the obligations pending compliance or accredited by the transferor company. This must be done in such a way that, in addition to compliance with applicable tax or commercial regulations, compliance with specific regulations on gambling matters or others (e.g. GDPR, AML, Safe gambling) is ensured. The DGOJ will also require the beneficiary company/ies to submit appropriate declarations or warrants that accredit these aspects.

Similarly, the beneficiary company/ies must provide new financial guarantees linked to the qualifying titles that are being acquired within three days of the final authorization by the DGOJ.

Finally, subsequent changes to the technical systems of gambling operators (player account and games software) that derive from the corporate transaction must be notified to the DGOJ. Those have to be officially approved and certified as the case may be. If all the software has been previously certified the process should be relatively straightforward.

## ACQUISITION OF A GAMBLING OPERATOR

The acquisition process for a Spanish online gambling operator has to take into account specific regulatory and market issues and will normally follow the steps below:

### 1. The search for a target company

Only a few of the existing gambling operators will be interested in selling or be open to external investment so research will be required to draw up a short list. The buyer should define criteria for the ideal target, particularly as regards the following:

- requirement for a General License for Casino Games as well as Betting
- requirement for local operations with a team and a client base
- attractiveness of existing platforms/technology.

Likewise, potential sellers should highlight these aspects to make their company more attractive to potential buyers.

### 2. Valuation of the target company

Once the target company has been identified, buyer and seller must sign an NDA as a prerequisite to a review and discussion of a valuation. Such valuation will take into consideration issues such as business operations, KPI's, evolution of GGR, number of active players accounts, potential fines, market regulatory framework and any anticipated changes.

### 3. Signing of a letter of intent

The previous step should allow the parties to draw up heads of terms or a letter of intent. Such a letter should cover the key elements of the agreement such as the total price, the initial payment, the earn-out part of the price, any part of the price to be placed into escrow, the team staying with the company, the due diligence process and closing schedule and an exclusive negotiation period. Most of these arrangements will be non-binding, however, the exclusivity period and other aspects such as confidentiality and non-solicitation should be binding at this stage. Negotiating a good letter of intent is important in order to have a strong position in the future negotiation of the Sale and Purchase Agreement.

### 4. Due Diligence process

The investigation and verification process to make sure that the transaction fulfills all the necessary conditions will take into account all the usual issues (i.e. business, financials, tax, employment, corporate) and also issues specific to an online gambling operator. Such issues shall include, but are not be limited to a review of:

- Any foreign direct investment regulations which apply in the particular case.
- The date of issuance and renewal of the licenses and any potential risk related to the licenses.
- Availability of bank guarantees.



- Software agreements with all third-party providers whose products comprise the gambling platform, the games, the CPD, security and any other necessary element.
  - The corporate compliance level of the company: online gambling operators are subject to a high level of corporate compliance obligations (e.g. around AML obligations; need for a DPO in personal data protection; and others). Therefore, the validation of the fulfillment of all the necessary obligations under Spanish law is critically important.
  - Specific gambling regulatory validation: check whether there is any ongoing enforcement action. Fines in the Spanish gambling sector can reach €50 million (although fines to date have not exceeded €5 million). The commission of two serious breaches within a two-year period constitutes a very serious breach under Spanish law, and can therefore entail an economic sanction from €1 million to €50 million as well as the potential loss of the gambling license. Buyers are strongly advised to conduct thorough checks on the existence of previous fines from the gambling regulator.
- issue in the negotiation of the SPA.
- Price and payment structure: the operation may be structured in a wide variety of ways. The acquisition may be total (100% of the shares of the company) or partial (51% of the shares of the company or less). Additionally, in both cases, the parties may be interested in deferring or placing conditions on payment to gain specific results (e.g. making the payment of part of the agreed price conditional on company results being maintained or increased or certain KPI's met and/or on the performance of key personnel). Likewise, with any stock or stock options held by key employees a procedure for the investor to acquire any shares not part of the initial equity investment shall be duly established in the SPA.

Although prior approval by the DGOJ is not necessary, at this stage and before signing the SPA, we would recommend asking for a meeting with the DGOJ to explain the proposed transaction and any regulatory issues that could be of relevance. This is an opportunity to ascertain that the DGOJ does not foresee any major hurdles nor has any concerns.

## 5. Signing and Closing of the Sale and Purchase Agreement (“SPA”)

The clauses of the SPA that will have to be more vigilantly negotiated will be:

- Representations and warranties of the seller: the findings of the due diligence process will have to be duly analyzed and included in the representations and warranties contained within the SPA.
- Limitations of responsibility: taking into account that the buyer will be assuming any contingency or liability that may arise in the future, the limitations of liability for the R&W made by the seller will play a key

## 6. Notification to the DGOJ

The transfer of shares has to be notified to the Spanish gambling regulator once executed, together with all the relevant information on the new owner of a gambling license (related parties; ultimate beneficial owner; etc.).

Each M&A operation is different and we advise both buyers and sellers on the importance of thorough planning well ahead the transaction. Some transactions may also have added complexity where the vendor is a gambling operator located in Malta, Gibraltar or Ceuta. In these instances it is critically important to verify all corporate, regulatory and tax implications in those territories early on in the process.



**XAVI MUÑOZ BELLVEHÍ**

Partner, ECIJA

For information contact  
+34 933 808 255  
xmunoz@ecijalegal.com