



# The Legal 500 Country Comparative Guides

## Chile

# GAMBLING LAW

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This country-specific Q&A provides an overview of gambling laws and regulations applicable in Chile.

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## CHILE GAMBLING LAW



### 1. What is the legal definition of gambling?

Chilean law does not define “gambling” per se. Instead, it distinguishes between *games of chance* and *games of intellectual or physical skill*. Games of chance are defined as those where luck or chance is the prevailing factor in the result of the relevant game (e.g., bingos, lotteries, scratch cards, etc.), and games of skill are those where such prevailing factor is intellectual or physical skill (e.g., sports betting, betting on horseracing, etc.)

Additionally, Law No. 19,995 of 2005 (the “Casino Law”) creates a third category of gambling games: casino games. The offering of casino games requires prior approval from the Chilean Casinos Superintendencia (*Superintendencia de Casinos de Juego* or the “Casino Authority”). This category of games include roulette (including French roulette, American roulette, and Big Six), card games (including blackjack, baccarat, various types of poker, and war), dice games (including craps, crown and anchor, and chuck a luck), bingo, and slot machines.

### 2. What legislation applies to gambling? Please provide a summary of the legal/regulatory framework.

The regulatory framework applicable to gambling in Chile is scattered across several regulatory bodies. Certain provisions contained the Chilean Civil and Criminal codes, the Casino Law, and Law No. 4,566 of 1929 (the “Horse Racing Law”). Two additional laws contemplate specific charters for two licensed lottery operators: the State-owned lottery operator Polla Chilena de Beneficiencia S.A. (“Polla”) and the privately owned Lotería de Concepción. There is an additional body of law, Decree Law No. 1,298 of 1975, which provides a special authorization to Polla to offer and exploit sports betting activities (including football/soccer, official Olympic sports, and car racing).

A bill seeking to regulate online gambling is currently

being discussed by the Chilean Congress (see number 17 below).

### 3. Which body/ies regulate gambling?

The main gambling regulatory body is the *Superintendencia de Casinos de Juego* or *SCJ* (the “Casino Authority”), an autonomous governmental entity with oversight powers limited to licensed brick-and-mortar casinos.

The functions of the Casino Authority include granting, denying, renewing, and revoking operating permits for brick-and-mortar casinos, in accordance with the provisions of the Casino Law. It also aims to ensure that all licensed casinos comply with applicable laws and regulations, including its own instructions and orders.

### 4. Are licences available? If so: a) What is the duration of a licence? b) What types of licences are available? c) Are there different types of licences for B2C and B2B operators? d) Do software suppliers need to be licensed?

Gambling licenses in Chile are currently only available to 24 brick-and-mortar casinos and must be obtained through a public bidding process. A special casino license only for cruise passengers can be obtained by cruise ships that travel through Chilean territorial waters, but not while docked at a Chilean port. There is no available licensing system for lottery operations. Finally, sports betting is not specifically regulated—other than as per Decree Law No. 1,298 of 1975 authorizing Polla, as stated above—and therefore there is no licensing regime in place.

**a. What is the duration of a licence?** The duration of brick-and-mortar casino licenses is 15 years. Cruise-based casino licenses have a five-year term and can be renewed for the same period.

**b. What types of licences are available?** Gambling

licenses are only available for the operation of brick-and-mortar and cruise-based casinos in Chile. Lottery and sports betting licenses are not available.

**c. Are there different types of licences for B2C and B2B operators?** Chilean gambling laws do not specifically regulate vendors or suppliers procuring products or services to licensed operators, and no specific licenses under Chilean gambling laws are required by such vendors or suppliers to operate in Chile. Licensed brick-and-mortar casinos, however, may only use certain gambling-related products (e.g., software) that are homologated by the Casino Authority.

**d. Do software suppliers need to be licensed?** See letter c above.

### 5. Are any types of gambling products prohibited?

Games of *chance* are generally illegal unless the activity has been specifically authorized by a special law pursuant to the Chilean Civil Code. The Chilean Criminal Code also penalizes illegal gambling. Games of *intellectual or physical skill* are generally and *prima facie* legal, although some authors have opined that gambling on third parties' skills (such as sports betting) is *per se* a game of chance for the person placing wager, and hence illegal.

Pursuant to the latest ruling issued by the Chilean Supreme Court on September 12, 2023, in the context of a website blocking order, any gambling activity in Chile is considered illegal (e.g., online gambling platforms) except for those activities offered by local authorized operators—i.e., licensed brick-and-mortar casinos, licensed cruise-based casinos, authorized lottery operators and horse racetracks, and sports betting operated by the Polla. In its ruling, the Supreme Court does not distinguish between activities that are offered by onshore or offshore operators, and it does not analyse the distinction between games of chance and games of physical or intellectual skill. Thus, under this Supreme Court decision all gambling activities not expressly authorized by law, including sports betting and online gambling products, would be illegal.

While the Chilean Supreme Court's rulings do not constitute a binding precedent under the Chilean continental/civil law legal system, such rulings still have significant influence over lower courts. Therefore, the current prevailing interpretation of Chilean gambling law is that any unlicensed or unauthorized gambling activity carried out within Chilean territory is prohibited.

### 6. What is the headline application procedure? Please include any eligibility and other application requirements, including approximate application costs and any need to establish a local presence.

Gambling licenses in Chile are currently only available for brick-and-mortar casinos and must be obtained through a public bidding process. The Casino Law establishes a limit of 24 available licenses and prohibits the establishment of casinos in the capital city of Santiago. Each bidding process establishes the specific technical requirements that operators must meet to be eligible for a license. The Casino Authority reviews and assesses whether each submitted offer meets the required technical standards, and issues a final resolution granting, denying, or renovating the license application.

Only locally incorporated corporations meeting the requirements provided under the Casino Law are eligible to participate in a casino license public bidding process.

### 7. Do individuals within the business need to be personally licensed or authorised? If so, please provide headline requirements.

There is no such requirement pursuant to the current regulation.

### 8. Is advertising of gambling permitted and, if permitted, how is it regulated?

The advertising of gambling products or services is not expressly permitted or otherwise regulated, except for a specific prohibition on advertising of unlicensed wagering on horse racing provided in the Horse Racing Law.

The Casino Authority has interpreted that the prohibition set forth in the Casino Law regarding the exploitation of *casino games* by unlicensed operators would also extend to the advertisement of unauthorized gambling activities. In addition, the Ministry of Justice recently issued an order to the National Association of Professional Football requiring that it cancels its sponsorship and advertising contract with an international online gambling operator: That order was upheld by the superior courts of Chile—albeit on procedural rather than substantive grounds—and complied by the parties.

To the extent that an add promotes an illegal gambling activity (e.g., the unlicensed offering of online gambling

or sports betting services), local criminal courts could eventually deem the advertiser as an “agent” or an accessory to the alleged crime of illegal gambling.

One bill being discussed in Congress’ Chamber of Deputies would provide new regulations applicable to advertising of online gambling, and an additional bill being considered by the Senate would prohibit online gambling advertising in sports events and clubs. The former is under active discussion, as further analysed in number 17 below, while discussion of the latter is apparently dormant at the Senate, awaiting the Chamber of Deputies’ approval of the former.

### **9. Are marketing affiliates permitted? If so, are they licensed or regulated?**

Marketing affiliates are not expressly permitted or otherwise regulated.

### **10. What are the penalties for offering, facilitating or marketing unlawful gambling, and can the gambler be penalised for participating in unlawful gambling?**

From a criminal law perspective, unless specifically authorized by a special law or regulation (e.g., the Casino Law, the Horse Racing Law, etc.), individuals participating as “lenders, owners, managers, or agents” in a gambling business are subject to (a) fines ranging from 11 to 20 UTM or Chilean-monthly tax indexation units (approximately USD 750 to USD 1,400), (b) fines ranging from 21 UTM to 30 UTM (approximately USD 1,460 to USD 2,100) if the prize is real estate, and (c) imprisonment ranging from 61 to, in cases of recidivism, 540 days. Lenders, owners, managers, or agents of illegal gambling facilities may be subject to fines ranging from 11 UTM to 20 UTM (approximately USD 750 to USD 1,400), and imprisonment ranging from 61 days to five years. Anyone attending unauthorized gambling facilities or illegal casinos with the intent of gambling, may be subject to (i) fines ranging from 11 UTM to 20 UTM (approximately USD 750 to USD 1,400) or (ii) imprisonment ranging from 61 to 540 days. In addition, the gambled funds or assets and the instruments, objects and equipment used for the illegal gambling may be confiscated.

Pursuant to the recently enacted Law on Economic Crimes, as of September 1, 2024, legal entities may also be criminally liable for offenses associated with illegal gambling activities. Depending on the gravity of the violation, legal entities may face penalties such as

debarment, loss of governmental benefits, fines, confiscation of assets, and even, in the most serious cases, dissolution. The amount of the fines is based on a per-day fine system and can range from approximately USD 680 up to USD 204 million, depending on the convicted entity’s daily net income and number of days during which it committed the relevant crime.

### **11. Briefly detail key requirements for licensees.**

In addition to being incorporated in Chile as a corporation, brick-and-mortar casino licensees are subject to control and oversight rules applicable to publicly traded corporations. They must have a minimum paid-in capital of UTM 10.000 (approximately USD 680,000), maintain appropriate financial stability and resources, and must file regular reports with the Casino Authority regarding their operations and financial performance, among others.

### **12. Briefly detail key anti-money laundering requirements.**

Brick-and-mortar and cruise-based casinos must comply with obligations relating to anti-money laundering (“AML”) and combating the financing of terrorism (“CTF”), as determined by the Financial Analysis Unit (“UAF”). These obligations include, among others: (i) registering with the UAF; (ii) appointing a compliance officer; (iii) preparing suspect transaction reports; (iv) performing Know Your Customer due diligence and completing customer data sheets; (v) adopting and implementing an AML and CTF manual; (vi) conducting AML and CTF training sessions for all employees; (vii) registering and analyzing the activity of clients from “non-cooperative” or “tax haven” jurisdictions; and (viii) maintaining records of cash transactions, politically exposed persons, and electronic fund transfers.

### **13. Briefly detail key responsible gambling (or safer gambling) requirements.**

Licensed brick-and-mortar casino operators are required to implement strict age verification measures at entry points to prevent underage gambling. Additionally, casino operators must adopt measures to ban any of the following persons from entering or remaining in their facilities: (i) individuals subject to an anti-dissipation interdict; (ii) individuals in a manifest state of alcohol intoxication or under the influence of drugs; (iii) civilians carrying weapons; (iv) individuals causing disturbances or otherwise disrupting the games; (v) individuals who,

upon request, cannot verify their identity with the corresponding official document. Operators must also provide clear and accessible information about responsible gaming, including resources to seek help regarding gambling addiction and related issues.

#### **14. Briefly detail shareholder reporting and approval threshold(s).**

Licensed brick-and-mortar casinos, which may have a maximum of ten direct shareholders, must report any direct or indirect change in shareholding (irrespective of whether it involves a change of control or not), and such change must be previously approved by the Casino Authority.

During a license bidding process, the Casino Authority requires comprehensive and detailed information on each direct shareholder, and on any indirect shareholder or investor controlling 5% or more of a company participating in a license bid. The Casino Authority has additional powers to investigate other direct and indirect shareholders, as well as the origin of all funds.

#### **15. Briefly detail the regulator's enforcement powers, including sanctions.**

The Casino Authority is the regulatory agency in charge of the oversight and supervision of the establishment, management, and operation of brick-and-mortar casinos. It may verify the casinos' compliance with legal and regulatory requirements (including on-site visits, audits, and reviews of operational practices), impose administrative sanctions and fines, and suspend or revoke gaming licenses.

#### **16. What is the tax rate?**

Licensed casino operators are subject to a special corporate income tax rate of 20% of the gross revenue obtained from the operation of authorized games, after deducting value-added tax (VAT) and mandatory provisional income tax payments.

#### **17. Are there any proposals for changing gambling laws and regulations in the next 12-24 months? If so, please provide an overview of the proposed changes and likely timing.**

On March 7, 2022, a bill was submitted before the Chilean Congress which, if and when approved, will legalise and regulate online gambling and sports betting

operations by allowing locally incorporated entities to file for online gambling licenses, subject to certain requirements (the "Bill"). Some of the main requirements and features of the Bill, as per its current draft, are: (i) shareholder and gaming group solvency, transparency and lawful conduct; (ii) minimum capital of licensee and lawful origin of funds; (iii) five-year renewable licenses; (iv) only independently-certified systems and games allowed; (v) Casino Authority registration, regulation and oversight; (vi) user and account rules and protections, including data privacy; (vii) special taxation system; (viii) responsible/safe gambling rules and policies, including prevention of underage gambling; (ix) regulation of illegal gambling conduct and enforcement measures; (x) license application cooling off period for online operators doing business in Chile prior to the enactment of the Bill; (xi) prevention of money laundering and financing of terrorism; etc.

The Bill is currently being discussed in the Chamber of Deputies and may still be subject to substantial amendments, including in connection with the features and requirements described above. While the likelihood and timing of an eventual approval of the Bill—as well as its final text—are largely unpredictable due to conflicting political views, business interests and legislative priorities, the government is pressing for its prompt approval by Congress. However, it seems unlikely that any such approval may occur prior to the second quarter of 2024.

#### **18. What key regulatory developments are proposed or on the horizon in the next 12-24 months?**

In addition to the bills described in numbers 8 and 17 above, as of September 2024, legal entities will be criminally liable for illegal gambling (see number 10 above.)

#### **19. Do you foresee any imminent risks to the growth of the gambling market in your jurisdiction?**

In addition to the risks posed by the Bill, over the course of the second semester of 2023 governmental and judicial authorities—including the Supreme Court, the Ministry of Justice, and the Telecommunications Undersecretary—have adopted a stringent position against offshore online gambling operators. It is unlikely that this scenario will change in short term, especially while the Bill remains under discussion in Congress.

## 20. If a gambling start-up was looking for a jurisdiction in which to commence its activities, why would it choose yours?

Gambling activities in Chile have substantial entry barriers, including strict regulatory requirements for brick-and-mortar casinos, regulatory uncertainty for online gambling operators, and strong opposition from

all market incumbents. These barriers, compounded by the recent anti-gambling decisions described in number 19 above, are powerful disincentives for gambling start-ups to initiate activities in Chile. However, Chile's fast-growing gambling market—especially online—and prospective regulation of online gambling will continue to entice all major international gambling operators, which have experienced and overcome similar or greater market-entry challenges in other jurisdictions.

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