

# Report – Normative Ordinance No. 1,330/2023

## Sports Betting

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On October 26, 2023, Normative Ordinance MF No. 1,330 ("PN No. 1,330") was published by the Brazilian Ministry of Finance, which provides for the general conditions for the commercial operation of the lottery modality of fixed-odds betting in the national territory, under the terms of Law No. 13,756, of December 12, 2018 ("Law No. 13,756"), as amended by Provisional Measure No. 1,182, of July 24, 2023 ("MP No. 1,182"), as well as regulating general rules on the rights and obligations of the bettors, the prevention of money laundering and other crimes, responsible gambling and other aspects.

Briefly contextualizing the history of sports betting regulation in Brazil, Law No. 13.756 was the first legislative project to regulate sports betting in the country. The law created a lottery modality called fixed-odds betting, defined as a system of bets on real sporting events, in which it is defined, at the time the bet is placed, how much the bettor can win if the prediction is correct.

Thus, sports betting was introduced in Brazil in 2018. However, Law No. 13.756 only established the creation of this type of lottery, setting a maximum deadline of 4 (four) years for the Ministry of Finance to regulate the type of bet it created. In this sense, in 2023, MP 1,182 was published, in order to fill the legislative gap that had existed until then, establishing the main regulatory aspects related to sports betting.

However, once again, MP No. 1,182 does not provide exhaustively all the rules related to the subject, and several regulatory aspects were still undefined, with the provisional measure mainly assigning the Ministry of Finance the power to issue the other rules that will govern the matter, on an infralegal basis. Thus, the Ministry of Finance recently published PN No. 1,330 to finally address regulatory (and, above all, operational) aspects related to sports betting that remained without any kind of standardization.

Below, therefore, we will analyze the new regulatory aspects implemented by PN nº 1,330 and how its rules will discipline sports betting in Brazil.

### 1. General Aspects

First, it is necessary to emphasize that, in Brazil, services related to sports betting have been offered for years, and the lack of regulation of the activity has caused participants in this sector to adapt their services - bearing in mind that, prior to the publication of Law No. 13.756, the offering of any services related to gambling was prohibited in Brazil, being characterized as a misdemeanor, under the terms of Decree Law No. 3.688, of October 3, 1941. In this sense, the sports betting brokers offering their services in Brazil operated in an offshore system, with their server based in a foreign country, so that their transactions, from a legal point of view, were merely considered to be the provision of an international service, with payments coming from Brazil.

Thus, MP No. 1,182 then established that the provision of services related to sports betting will be subject to the granting of authorization, on an onerous basis (i.e. in order for a given operator to obtain a license to explore sports betting activities in Brazil, it must pay a fee) by the Ministry of Finance.

However, even with the publication of Law No. 13,756 and MP No. 1,182, the vast majority (if not all) bookmakers still operate under the system mentioned above, given the incompleteness of the applicable regulations, including in relation to the granting of the necessary authorizations to operate this service. Thus, as one of its first provisions, PN No. 1,330 determines that the conditions and general provisions regulated by it apply to all companies that commercially operate the lottery sport betting modality in the national territory, including prior to the granting of authorization by the Ministry of Finance.

It is important to note that PN No. 1,330 determines that compliance with the obligations set out therein (detailed below) does not mean exemption from the other requirements to be subsequently established in order to obtain authorization, defined in specific regulations.

## 2. Requirements and rules applicable to sports betting operations

Reaffirming a provision already laid down in MP No. 182, PN No. 1,330 determines that the fixed-odds lottery will be operated exclusively in a competitive environment, with no limit on the number of authorizations, and may be commercialized through any distribution channel, whether physical or virtual. In addition, PN No. 1,330 anticipates that specific regulations regarding the provision of services will be issued by the Ministry of Finance (in other words, once again, the regulations related to the subject remain incomplete, subject to new rules to be published).

According to PN No. 1,330, applications for authorization that are considered fraudulent or contain adulterated or untruthful information will be rejected. In addition, any authorizations granted under these terms will be revoked or annulled, depending on the determining reason, subject to due legal administrative process, in which the company will be able to defend itself against allegations of fraud (a process also to be governed by specific regulations, yet to be published).

National or foreign legal entities may apply for authorization to operate sports betting services, as long as they are duly established in national territory. Thus, foreign companies may be authorized to operate sports betting by setting up a subsidiary in Brazil - proof of the foreign company's incorporation in Brazil will be required prior to granting the authorization.

The granting of authorization will be preceded by: (i) legal qualification; (ii) tax and labor regularity; (iii) economic and financial qualification; and (iv) technical qualification.

In addition, PN No. 1,330 establishes a series of requirements which must be met in order to obtain authorization:

- I. have the main corporate purpose of operating fixed-odds betting;
- II. prove its regular incorporation under Brazilian law, with headquarters and administration in the country;
- III. prove the lawful origin of the funds that make up the share capital;
- IV. demonstrate the suitability of its legal representatives, partners, final beneficiaries and occupants of strategic positions (in a procedure to be defined in a specific regulation, also not yet published);
- V. have a sports betting platform that meets the technical and operational requirements defined in a specific regulation (yet to be published) and that is certified by a laboratory whose capacity has been recognized by the Ministry of Finance.
- VI. have a corporate governance structure compatible with the complexity, specificity and risks of the business;
- VII. provide a customer service for bettors, based in Brazil, with service in Portuguese, operated through a free electronic and telephone channel, operating 24 hours a day, seven days a week, able to deal with complaints, doubts and other problems related to betting;
- VIII. register on the digital platform referred to in Decree 8.573, of November 19, 2015;
- IX. adopt integrity mechanisms when placing fixed-odds bets (another procedure that will be governed by specific regulations to be published by the Ministry of Finance).
- X. implement a policy to prevent the manipulation of results, money laundering, the financing of terrorism and the proliferation of weapons of mass destruction (an issue of great importance, which is briefly addressed by PN No. 1,330, as will be seen below, but which will also be regulated by specific rules to be issued by the Ministry of Finance); and

XI. designate a person responsible for the following areas, with no accumulation of functions: (a) accounting; (b) data security; (c) ombudsman; (d) operational security of the betting system; and (e) integrity and compliance.

In addition, PN No. 1,330 establishes a list of hypotheses in which authorization to operate sports betting services will not be granted:

- I. individuals
- II. legal entities that do not meet the requirements established in PN No. 1,330 and in the specific regulations issued by the competent technical area of the Ministry of Finance;
- III. legal entities whose controlling partners or shareholders, individually or as part of a control agreement, managers and other persons who make up their corporate structure hold a direct or indirect interest in a Football Corporations or professional sports organization;
- IV. legal entities whose controlling partners or shareholders, individually or as part of a control agreement, managers and other persons who make up their corporate structure act as professional athletes, members of the coaching staff, referees or managers of a Brazilian sports team;
- V. legal entities, including the controlling partners or shareholders, managers and other people who make up their corporate structure, who have their right to bid and contract with the Public Authorities suspended, or who have been declared unfit by the Public Administration, at the federal, state or Federal District and municipal levels, for as long as the reasons determining the punishment persist or until their rehabilitation is promoted;
- VI. foreign companies that have had their authorization withdrawn or revoked in other jurisdictions in the last five years;
- VII. legal entities whose partners or controlling shareholders, managers and other people who make up their technical or corporate staff are spouses, partners or relatives in a direct or collateral line, by consanguinity or affinity, up to the third degree, of public servants or service providers who work in the area of the Ministry of Finance responsible for granting the authorizations referred to in PN No. 1,330; and
- VIII. legal entities whose partners or controlling shareholders, directors and other persons who make up their corporate structure have: (a) a legal impediment; (b) a conviction for administrative impropriety; (c) a conviction for bankruptcy, tax evasion, malfeasance, active or passive corruption, concussion, among others; or (d) a conviction with a criminal sentence that prohibits, even temporarily, access to public office, by a final and unappealable court decision.

Finally, PN No. 1,330 stipulates that the Ministry of Finance will keep up-to-date and publish a list of the companies authorized to operate the fixed-odds lottery and their respective websites.

### **3. Rights and Obligations of the Bettor and Responsible Gambling**

Portraying one of the main concerns, not only in Brazil, but in all jurisdictions that have already regulated sports betting services, PN No. 1,330 has several rules aimed at establishing rights and obligations applicable to bettors, as well as rules aimed at preserving responsible gambling practices in the country.

Thus, according to the rule, information on bets must be published on the website or other means made available by the company offering the services, in such a way as to allow bettors to clearly and precisely understand the betting platform and the criteria for winning the bet, and must contain at least the following information: (i) how to place bets; (ii) the fixed odds established for each bet; (c) how and where prizes are received, which must be paid exclusively into a bank account held by the bettor; (d) the existing financial balance in the bettor's account; and (d) the company's name, e-mail address and contact telephone number.

In addition, applying common regulatory trends in the market, PN No. 1,330 requires that, in order to place bets, the operator must obtain from the bettor: (i) consent to process personal data, under the terms of the

applicable regulations; and (ii) knowledge of the content of the prize policies practiced by the operating company, in compliance with the provisions of this Ordinance and other legal and regulatory rules in force.

With regard to responsible gambling practices, PN No. 1,330 determines that bets will only be sold and prizes paid to people over eighteen years of age. In addition, the rule requires that, in order to place bets, the bettor must identify himself by providing his (i) full name; (ii) date of birth; (iii) identification document number in the Brazilian General Registry (RG) or passport; and (iv) Individual Taxpayer Registry (CPF) number or equivalent document, if a foreigner.

In addition, the company authorized to offer services related to sports betting must promote informative actions to raise awareness of compulsive gambling disorder, by drawing up codes of conduct and disseminating and implementing good practice and harm reduction policies, as well as having internal control mechanisms and systems that allow the bettor to establish (i) a daily limit on the time spent playing or betting; (ii) a maximum loss limit; (iii) a break period; and (iv) self-exclusion.

Finally, it is strictly forbidden for the company offering the services to (i) accept payment instruments that offer the punter a post-paid payment account, whether for the purpose of purchase or transfer; (ii) accept cash; (iii) issue a proposal slip; and (iv) accept deposits from third parties into the bettor's account.

#### **4. Prevention of Money Laundering and Other Crimes**

Since the publication of Law No. 13,756, one of the Ministry of Finance's biggest concerns regarding sports betting has been the prevention of money laundering and other crimes. Recent scandals involving match-fixing and other crimes related to sports betting, not only in Brazil but around the world, have drawn the attention of public authorities to the possibility of criminal practices involving the sector.

Accordingly, PN No. 1,330 establishes that if there are indications that the crimes provided for in Law No. 9,613, of March 3, 1998 (which deals, above all, with the crimes of laundering or concealing assets, rights and values) ("Law No. 9,613") have occurred, the operator will notify the Brazilian Council for the Control of Financial Activities – COAF, by electronic means, on the COAF Information System – SISCOAF ([www.coaf.gov.br](http://www.coaf.gov.br)), in accordance with the instructions defined on the platform.

Additionally, in an important provision, PN No. 1,330 establishes that in order to obtain authorization to offer sports betting services, operators must develop and implement effective policies, procedures and internal controls consistent with the nature, complexity and risks of the operations carried out, which include the identification, assessment, control and monitoring of the risks of involvement in situations related to money laundering and the financing of terrorism and the proliferation of weapons of mass destruction.

In this regard, prior to granting authorization, the following will be required:

- I. a policy for the prevention of money laundering and terrorist financing, which includes guidelines on risk assessment in the underwriting of operations, in the hiring of third parties or other related parties, in the development of products, in private negotiations and in operations with assets;
- II. drawing up criteria and implementing procedures for identifying clients, final beneficiaries, employees, third parties and other related parties, and for keeping physical and/or electronic records relating to products and procedures exposed to the risk of serving money laundering and terrorist financing;
- III. implementation of procedures for identifying, monitoring, analyzing risk and reporting operations that may constitute evidence of money laundering, terrorist financing or the proliferation of weapons of mass destruction, or be related thereto; and
- IV. preparation and execution of a continuous training program aimed at disseminating the culture and qualifying employees, partners and outsourced service providers according to their respective functions, specifically for compliance with the provisions of Law No. 9,613, Law No. 13,260 of March 16, 2016 and other rules and regulations regarding the prevention of money laundering, terrorist financing and the proliferation of weapons of mass destruction.

## 5. Communication, Advertising and Marketing

Addressing another much-discussed issue with the beginning of the regulation of sports betting, PN No. 1,330 establishes additional rules and requirements regarding communication, advertising and marketing of these services (which are in addition to the rules already laid down in MP No. 1.182 – which, above all, determines that only companies that have already obtained authorization from the Ministry of Finance to offer this type of service may broadcast advertisements and propaganda about sports betting).

According to PN No. 1,330, communication, advertising and marketing actions for sports betting must be guided by social responsibility and the promotion of awareness of responsible gambling. In addition, the rule makes several restrictions, among which we highlight advertisements and publicity that: (i) are broadcasted in schools and universities; (ii) do not contain an age restriction warning, embodied in the "18+" symbol or the "prohibited for persons under 18" warning; (iii) make misleading claims about the odds of winning or the possible winnings that bettors can expect (iv) promote the use of the product as a means of recovering amounts lost in previous bets or other financial losses; and (v) present gambling as socially attractive or contain statements by celebrities or digital influencers suggesting that gambling contributes to personal or social success, or improvement of financial conditions – among other restrictions.

In addition, commercial advertising related to sports betting must be accompanied by warning clauses about the harmful effects of gambling, with the message "Play Responsibly", and other clause text that encourages social responsibility may be used.

Finally, without prejudice to other restrictions and guidelines issued by the National Advertising Self-Regulation Council – CONAR, advertising for sports betting that involves children or adolescents or is directed at them is prohibited.

## 6. Prior Expression of Interest to obtain the Authorization

Finally, representing the first initiative by the Ministry of Finance to effectively start the process of granting authorizations for the operation of services related to sports betting, PN No. 1,330 states that legal entities interested in the grant may submit a prior expression of interest to the Ministry of Finance (via e-mail: cogel@fazenda.gov.br), until November 25, 2023.

When sent to the Ministry of Finance, the prior expression of interest, signed by the company's legal representative, must be accompanied by (i) the articles of association, bylaws or commitment to set up a Special Purpose Company - SPE, or in the case of a foreign company, a commitment to set up a company in Brazil, written in Portuguese or accompanied by a sworn translation; and (ii) a form duly completed and signed by the legal representative, with the following information (a) company name; (b) Brazilian tax identification number - CPNJ (or corresponding document, if a foreign company has not yet been incorporated in Brazil); (c) address; (d) city; (e) state; (f) country; (g) postal code; (h) telephone number; (i) e-mail address; (j) institutional website; (k) number of brands it intends to operate in Brazil; (l) types of betting it intends to operate in Brazil (sports betting, online gaming, or both); (m) inform if the company has a license or authorization in other countries to operate fixed odds betting and, if so, which countries (indicating the license numbers); (n) name, tax identification number - CPF, passport, telephone number and e-mail address of the company's legal representative.

According to PN No. 1,330, companies that comply with the prior expression of interest will have priority in the analysis of their authorization requests, when the deadline for submitting the application opens.