
CHAMBERS GLOBAL PRACTICE GUIDES

Gaming Law 2022

Definitive global law guides offering comparative
analysis from top-ranked lawyers

Sweden: Law & Practice
Sweden: Trends & Developments
Stefan Widmark, Hans Eriksson
and Petter Larsson
Westerberg & Partners

practiceguides.chambers.com



Law and Practice

Contributed by:

Stefan Widmark, Hans Eriksson and Petter Larsson

Westerberg & Partners see p.18



Contents

1. Introduction	p.4	6. Online Gambling	p.9
1.1 Current Outlook	p.4	6.1 B2C Licences	p.9
1.2 Recent Changes	p.4	6.2 B2B Licences (Suppliers, Software, Etc)	p.9
2. Jurisdictional Overview	p.4	6.3 Affiliates	p.9
2.1 Online	p.4	6.4 White Labels	p.9
2.2 Land-Based	p.4	6.5 Recent or Forthcoming Changes	p.9
3. Legislative Framework	p.5	6.6 Technical Measures	p.10
3.1 Key Legislation	p.5	7. Responsible Gambling (RG), Also Known as Safer Gambling (SG)	p.10
3.2 Definition of Gambling	p.5	7.1 RG Requirements	p.10
3.3 Definition of Land-Based Gambling	p.5	7.2 Recent or Forthcoming Changes	p.11
3.4 Definition of Online Gambling	p.5	7.3 Gambling Management Tools	p.11
3.5 Key Offences	p.5	8. Anti-money Laundering (AML)	p.11
3.6 Penalties for Unlawful Gambling	p.6	8.1 AML Legislation	p.11
3.7 Recent or Forthcoming Legislative Changes	p.6	8.2 Recent or Forthcoming Changes	p.12
4. Licensing and Regulatory Framework	p.6	8.3 AML Requirements	p.12
4.1 Regulatory Authority	p.6	9. Advertising	p.13
4.2 Regulatory Approach	p.6	9.1 Regulatory/Supervisory Agency	p.13
4.3 Recent or Forthcoming Changes	p.7	9.2 Definition of Advertising	p.13
4.4 Types of Licences	p.7	9.3 Key Legal, Regulatory and Licensing Provisions	p.13
4.5 Availability of Licences	p.7	9.4 Restrictions on Advertising	p.13
4.6 Duration of Licences	p.7	9.5 Sanctions/Penalties	p.14
4.7 Application Requirements	p.7	9.6 Recent or Forthcoming Changes	p.14
4.8 Application Timing	p.8	10. Acquisitions and Changes of Control	p.14
4.9 Application Fees	p.8	10.1 Disclosure Requirements	p.14
4.10 Ongoing Annual Fees	p.8	10.2 Change of Corporate Control Triggers	p.14
5. Land-Based Gambling	p.9	10.3 Passive Investor Requirements	p.14
5.1 Premises Licensing	p.9	11. Enforcement	p.14
5.2 Recent or Forthcoming Changes	p.9	11.1 Powers	p.14

11.2 Sanctions	p.15
11.3 Financial Penalties	p.16
11.4 Personal Sanctions	p.16
12. Recent Trends	p.16
12.1 Social Gaming	p.16
12.2 Esports	p.16
12.3 Fantasy Sports	p.16
12.4 Skill Gaming	p.16
12.5 Blockchain or Cryptocurrency	p.16
13. Tax	p.16
13.1 Tax Rate by Sector	p.16
14. Anticipated Reform	p.16
14.1 Anticipated Reform	p.16

1. Introduction

1.1 Current Outlook

Four years have now passed since the re-regulation of the Swedish gambling market in 1 January 2019 and the most obvious and immediate issues related to the Swedish Gambling Act that entered into force on that date have since been addressed by the Swedish Gambling Authority (SGA). However, the Swedish gambling market still faces many unsolved regulatory issues and the next couple of years will be important in maintaining a continued channelling of customers to licensed operators and improving the damaged reputation of gambling operators among the Swedish public.

On this point, it is notable that there has been a shift in parliamentary power following the general election in September 2022 and that a new multiparty government has been appointed for the next four years. Interestingly, on 23 November 2022 the new members of Parliament are scheduled to vote on a pending legislative bill that was drafted by the previous government. Highlights of the pending bill include proposed amendments concerning the marketing of gambling services, the implementation of B2B licences, and new remedies by which the SGA can target unlicensed operators.

Naturally, the shift of power and the pending bill are the most current topics in the gambling sector, as they will give a good indication of the new government's approach and will potentially result in new regulatory requirements for the operators. The content of the pending bill is addressed in the separate sections that follow.

1.2 Recent Changes

Following the outbreak of the COVID-19 pandemic, the government in power at the time

swiftly implemented temporary restrictions on gambling, which included restrictions on weekly deposit limits, losses, login times, and the value of first-time bonuses. Upon two extensions of the regulation, the restrictions were lifted on 14 November 2021.

Owing to the continuous high spread of infection in early 2022, an additional proposition concerning temporary restrictions on online gambling was presented in January 2022. The new restrictions were set to be implemented on 7 February 2022. However, following referrals within the sector, the proposal was withdrawn on 27 January 2022. Hence there are no current restrictions on gambling that are due to the COVID-19 pandemic, but the past few years is a testament to how swiftly new gambling restrictions may be adopted if deemed necessary. It remains to be seen whether the newly appointed government will take the same approach if the spread of infection increases again.

2. Jurisdictional Overview

2.1 Online

Social games without any bets or winnings/prizes do not require a licence.

2.2 Land-Based

The Swedish government has an exclusive right to offer full-scale land-based casino services. State-owned enterprise Svenska Spel currently operates such traditional land-based casinos in Sweden (Casino Cosmopol). In the competitive market, a licence for land-based gambling may under certain conditions be obtained for betting, casino games that are not held in casinos, and goods gambling machines. Non-profit entities may obtain licences for land-based bingo and lotteries.

3. Legislative Framework

3.1 Key Legislation

The two key legislative acts governing the Swedish gambling market are the Swedish Gambling Act (2018:1138) and the Swedish Gambling Ordinance (2018:1467).

In addition, the following legal legislation should be mentioned:

- the Gambling Tax Act (2018:1139);
- the Act on Measures Against Money Laundering and Financing of Terrorism (2017:630);
- the Swedish Marketing Act (2008:486);
- the Consumer Services Act (1985:716);
- the EU General Data Protection Regulation (GDPR);
- the Act Containing Supplementary Provisions to the EU General Data Protection Regulation (2018:218) (“the Data Protection Act”); and
- the Payment Services Act (2010:751).

Within its mandate, the SGA has also issued several binding regulations concerning match fixing, money laundering, etc, which could be found on the regulator’s official website.

3.2 Definition of Gambling

The Swedish Gambling Act applies to all gambling involving money and prizes of monetary value. As such, gambling is defined in Chapter 2, Section 1 of the Gambling Act as “lotteries, betting, combination games and pyramid games”. Said concepts are in turn defined as follows.

- Lottery – any activity in which the outcome is based on chance.
- Betting – any activity where the participants have a chance to win a prize when a stake is placed on:
 - (a) the outcome of a future event; or

- (b) whether or not a certain occurrence will come about or not in the future.

- Combination games – games in which the participants have a chance to win a prize and where the probability of winning is dependent on a combination of skill and chance.
- Pyramid games – games in which the winnings derive from bets placed by future participants and where the likelihood of winning depends on the number of participants who subsequently join. Pyramid games are prohibited under the Gambling Act.

3.3 Definition of Land-Based Gambling

According to the legislative bill of the Gambling Act, land-based gambling is defined as games between a player and a gambling operator that take place in a physical meeting.

3.4 Definition of Online Gambling

According to Chapter 2, Section 1 of the Gambling Act, online gambling is defined as any form of gambling provided through electronic means of communication and played by a player or multiple players and the party that provides the gambling.

3.5 Key Offences

According to Chapter 19, Section 1 of the Gambling Act, a party that intentionally or through gross negligence provides unauthorised gambling or gambling without a licence shall be fined or imprisoned for a maximum of two years for unlawful gambling operations (unlawful gambling). According to Chapter 19, Section 2 of the Gambling Act, those who intentionally or through gross negligence aid and abet participation in such unlawful gambling shall be fined or imprisoned for a maximum of two years (promotion of unlawful gambling).

For both crimes, there will not be any sentencing for minor infractions.

According to Chapter 19, Section 4 of the Gambling Act, those who take inappropriate actions to manipulate the outcome of a game that is subject to licence requirements under the Gambling Act shall be imprisoned for a maximum of two years (cheating).

3.6 Penalties for Unlawful Gambling

Unlawful gambling, aiding and abetting of unlawful gambling and cheating is punishable with fines or imprisonment for up to two years. If severe, sentences up to six years' imprisonment could be ordered.

When assessing whether a case of cheating is serious, particular attention shall be paid to whether or not the offence was committed as part of a crime that is:

- carried out systematically;
- is far-reaching; or
- of a particularly dangerous nature (according to Chapter 19, Section 5 of the Gambling Act).

3.7 Recent or Forthcoming Legislative Changes

The pending legislative bill includes a proposition to implement a ban on aiding and abetting participation in illegal gambling or services from unlicensed operators, which will also vest the SGA with remedies to target such activities. The suggested provision seeks to give the SGA a mandate to issue an injunction – as an alternative to reporting the case to the police in order to initiate criminal legal action – against a software developer, for example, for promoting its services by outsourcing the back-end operations to unlicensed operators.

4. Licensing and Regulatory Framework

4.1 Regulatory Authority

The SGA is the authority appointed to grant gambling licences and acts as the regulator in relation to compliance with the Gambling Act, the Gambling Ordinance and the regulations issued by the SGA. As regards marketing of gambling services, the Swedish Consumer Agency conducts separate supervision and the Swedish Tax Agency is the supervising authority when it comes to payment of the relevant taxes.

4.2 Regulatory Approach

The Gambling Act is drafted as a framework regulation. In turn, the Gambling Act mandates the SGA to issue regulations on matters including responsible gambling requirements, annual fees, technical requirements, and which specific games should be covered by the different licence categories.

The SGA's supervision only covers gambling provided in Sweden or gambling directed towards the Swedish market. Online gambling services that are not directed towards the Swedish market are not therefore considered to be provided in Sweden for the purposes of the Gambling Act.

The assessment of whether gambling services are directed towards the Swedish market should be made by way of an overall assessment. According to the legislative bill, it should particularly be factored in whether, for example, a website includes Swedish language and/or accepts bets and pay-outs in Swedish currency. The SGA has also provided additional guidance on which circumstances indicate that the services are directed towards the Swedish market. These include:

- use of a.se domain;
- contact information for customer service with a Swedish phone number;
- usage of an e-identification system used exclusively or mostly by Swedish consumers;
- marketing in Sweden by the company in question or its affiliates; and
- use of payment options and/or payment service providers that are either:
 - (a) registered in Sweden; or
 - (b) exclusively or largely used by Swedish consumers.

4.3 Recent or Forthcoming Changes

The pending legislative bill to amend the Gambling Act includes a provision that existing licences will be valid during the processing of renewal applications, as long as such applications are filed at least four months prior to expiry.

4.4 Types of Licences

For state-owned entities, a licence may be granted to provide casino games at a casino, games on slot machines, certain lotteries, online bingo, computer-simulated gambling machines, local pool betting, and cash and goods gambling machines.

For entities that provide gambling for the benefit of the public good, a licence may be granted for land-based bingo, certain lotteries, and pool betting at horse-racing tracks.

Licences for cash and token gambling machines and casino games that do not take place online or a casino may be granted for vessels in international traffic.

Licences for commercial online gambling cover online casino games, online bingo and computer-simulated gambling machines.

Licences for commercial land-based and online betting cover sports betting, betting on future events, and the outcome of lotteries (provided that consent is given from the provider of the lottery).

Licences for land-based commercial gambling may be granted for:

- casino games that do not take place in a casino;
- goods gambling machines provided in facilities licensed to serve alcohol or in amusement parks; and
- card game tournaments.

4.5 Availability of Licences

There is no cap when it comes to the number of licences that can be granted to operators in the competitive parts of the Swedish gambling market.

However, as outlined in 4.4 **Types of Licences**, certain licences are only available to state-owned companies or charities/non-profit entities.

4.6 Duration of Licences

Licences can be issued for a period of five years at a time. However, on several occasions the SGA has granted shorter licences on the basis of an applicant's negative financial equity, for example, or previous regulatory violations in other jurisdictions.

4.7 Application Requirements

The key requirements for applying to obtain a Swedish gambling licence are:

- knowledge, experience, organisational arrangements, and general suitability to provide gambling services; and
- expected compliance probability.

The key application documents are essentially the same for all licence types. A licence application must include a form filled in by all management and board members involved in the applicant entity – as well as all “qualified owners” (ie, those with ownership or indirect ownership of at least 10% of the shares or voting rights in the applicant entity), including any ultimate beneficial owners that hold qualified ownership.

The following documents for each such individual, translated into Swedish, must be enclosed with the application:

- certified copy of ID (passport);
- employment history; and
- certified copy of criminal record from all states of residency within the past ten years (the record must not be older than six months when filed with the SGA).

For all legal entities with a direct or indirect ownership of a least 10% (shares or voting rights) in the applicant entity, the following documents must be submitted:

- certificate of registration;
- financial statements for the past fiscal year; and
- a service provider based outside the EEA must have one representative domiciled in Sweden.

4.8 Application Timing

A complete application is normally processed within two or three months.

4.9 Application Fees

The following application fees apply to the licences available to commercial (ie, non state-owned) operators in Sweden:

- commercial online gambling licence – SEK400,000;
- commercial land-based gambling licence – SEK400,000;
- joint application for commercial online and land-based gambling licence – SEK700,000;
- renewal of above-mentioned licences – SEK300,000;
- amendment to above-mentioned licences – SEK150,000; and
- licence for gambling on vessels in international traffic – SEK3,600.

4.10 Ongoing Annual Fees

The following annual fees apply to the licences available to commercial (ie, not state-owned) operators in Sweden:

- commercial land-based gambling licence – SEK2,400; and
- commercial online gambling licence – SEK30,000–SEK500,000.

The annual fees for commercial online gambling licences are based on the operator’s expected annual turnover as follows:

- less than SEK10 million turnover – SEK30,000;
- SEK10 million–SEK20 million turnover – SEK60,000;
- SEK20 million–SEK50 million turnover – SEK120,000;
- SEK50 million–SEK100 million turnover – SEK240,000;
- SEK100 million–SEK200 million turnover – SEK300,000;
- SEK200 million–SEK500 million turnover – SEK400,000; and
- more than SEK500 million turnover – SEK500,000.

5. Land-Based Gambling

5.1 Premises Licensing

As set out in 4.4 **Types of Licences**, licences for full-scale land-based casino operations are exclusively reserved for stated-owned businesses and only four such casinos are allowed. Charities/non-profit entities may also obtain licences for land-based bingo, lotteries and pool betting at horse racing tracks.

As regards commercial operators, licences for certain land-based casino games may be granted to:

- operators of hotels and restaurants authorised to serve alcohol;
- operators of amusement parks; and
- operators of ships in international traffic.

The licensing requirements correspond to the general requirements for gambling operations, see 4.7 **Application Requirements**.

5.2 Recent or Forthcoming Changes

There have not been any recent changes in the land-based gambling sector, nor are any changes to this sector anticipated in the near future.

6. Online Gambling

6.1 B2C Licences

As set out in 4.4 **Types of Licences**, commercial operators may apply for commercial online gambling licences and commercial online and land-based licences (ie, online B2C licences). Such licences are required for in order to provide any services to the Swedish market, even if the service provider is based in a foreign jurisdiction.

6.2 B2B Licences (Suppliers, Software, Etc)

B2B licences are currently not available or mandatory in Sweden. Licence holders that use gambling software suppliers must provide proof of technical certification for such operators to the SGA when applying for a licence to operate in Sweden. As set out in 6.5 **Recent or Forthcoming Changes**, the implementation of B2B licences is imminent in the Swedish market.

6.3 Affiliates

Affiliates to licence holders are considered unlicensed operators and are subject to the same restrictions under the Gambling Act as other unlicensed service providers – that is, they are unauthorised to market or provide gambling services to the Swedish market.

A licence holder may under certain conditions contract an affiliate (or a non-associated entity) to carry out operative work or functions in its business operations, provided that the licence holder remains responsible for the services in relation to its customers.

Except for certain gambling services (eg, casino business and slot machines), a joint licence may be sought together with another service provider that is authorised to provide gambling services within the EEA.

6.4 White Labels

White-label arrangements are accepted and will require the entity providing the white-label product to apply for a gambling licence.

6.5 Recent or Forthcoming Changes

The pending proposition to amend the Gambling Act includes a proposition to make B2B licences to provide gambling software mandatory on the Swedish market.

6.6 Technical Measures

Under certain circumstances, the SGA may order an ISP to include a clearly visible warning notice on websites that provide gambling services without holding a licence. Such notice may include a caution that the services are unlicensed and unsupervised and that all winnings are subject to Swedish tax.

The SGA may also request that an administrative court issues a blocking payment order to unlicensed operators. Such order should be issued if it can be assumed that an account will be used to forward deposits or payouts from unlicensed gambling operations.

7. Responsible Gambling (RG), Also Known as Safer Gambling (SG)

7.1 RG Requirements

Under the Swedish Gambling Act, all licence holders are subject to responsible gambling (RG) requirements. This includes a general “duty of care” to:

- ensure that social and health considerations are observed;
- counteract excessive gambling; and
- help gamblers reduce their gambling when there is reason to do so.

All licence holders must adopt an action plan for how the duty of care obligation will be complied with.

The duty of care obligation includes responsibility for monitoring all customers and, in the event of excessive gambling, licence holders may need to apply restrictions and limitations – for example, by contacting the customer and/

or limiting deposit limits and/or gambling time – or, ultimately, suspend the customer. According to research in preparation for the Gambling Act, both feedback and restrictions should be applied at an early stage and before the gambling has caused any negative harm.

The central RG requirements of the Gambling Act are as follows:

- licence holders must make it possible for customers to limit or suspend themselves from gambling – in practice, this is conducted by use of the suspension registry www.spelpaus.se, which is operated by the SGA;
- people under the age of 18 are not permitted to gamble and anyone under the age of 20 is not allowed to enter state-owned land-based casinos;
- licence holders are not permitted to provide credit nor to imply such is on offer; and
- bonus offers are only allowed the first time the customer participates in gambling with the licence holder.

Moreover, the SGA has provided a guide featuring examples of how signs of excessive gambling can be identified, and which individualised measures the SGA expects licence holders to take when customers show signs of excessive gambling. Factors to consider in this regard are:

- gambling patterns – active gambling time, chasing losses, types of games, increased deposit limits, interrupted withdrawals, deposit denials;
- contact with the licence holder – claims to win back losses, agitated behaviour, mentioning of financial problems; and
- other factors – previous self-exclusion, age (young ages entails greater risk).

7.2 Recent or Forthcoming Changes

The pending legislative bill provides for an exemption from the current bonus restriction – ie, bonuses may only be offered at the first gambling event with the licence holder – for those licence holders that exclusively provide gambling services for the public good.

7.3 Gambling Management Tools

The following gambling management tools must be applied to ensure compliance with the duty of care requirement under the Gambling Act.

Online Gambling

- A contact obligation in relation to customers that raise their deposit limit or specify a limit higher than SEK10,000 per month. It is not sufficient to use pop-up messages as the only contact – it should be combined with an email or phone call, for example.
- All customers must set a daily, weekly and monthly deposit limit. An increase of the limits will only be effective after 72 hours, whereas any lowering of the limits is with immediate effect.
- Upon login, all customers must be given a notice on the licence holder's duty of care obligations, any accumulated losses during the past 12 months, and the chosen deposit and loss limits.
- All customers should receive regular, clear, and varied notifications on wins and losses and information on login time. Such notifications must be confirmed by the customer and an option to log out should be provided.
- Hyperlink logotypes to self-tests on gambling behaviour and risks, settings to limit deposit limits or login times, and a self-exclusion option should be placed clearly and always be accessible on all pages of the gambling website.

Slot Machines

- All customers must set a daily, weekly and monthly loss limit. An increase of the limits will be effective after 72 hours only, whereas any lowering of the limits is with immediate effect.
- Use of vouchers requires the licence holder to verify that the identity of the individual using the voucher corresponds with the name on the voucher.
- All customers should receive regular, clear and varied notifications on wins and losses and information on login time. Such notifications must be confirmed by the customer and an option to quit should be provided.
- Upon login, all customers should be given a notice on the licence holder's duty of care obligations, any accumulated losses during the past 12 months, and the chosen loss limits.
- Hyperlink logotypes to self-tests on gambling behaviour and risks, settings to limit deposit limits or login times, and a self-exclusion option should be placed clearly in a fixed field on the screen of the slot machine.

Self-exclusion registry

Upon registration and login, all licence holders must verify that the customer has not registered with the Swedish self-exclusion register Spelpaus. The time periods for self-exclusion may range from 24 hours to indefinitely. An indefinite self-exclusion may not be revoked before 12 months has passed.

8. Anti-money Laundering (AML)

8.1 AML Legislation

All gambling operations in Sweden are subject to the restrictions in the Act on Measures Against Money Laundering and Financing of Terrorism.

Under its mandate, the SGA has also issued binding regulations on AML measures in SIFS 2019:2 and published guidance on how licence holders should work to counteract money laundering and terror financing.

In short, the following safety measures should be conducted:

- customer due diligence measures;
- monitoring and reporting;
- processing of personal data;
- aptitude testing of staff;
- compliance and internal control; and
- model risk management procedures, if such models are used.

If the licence holder is part of a corporate group, there are special provisions on group-wide procedures that include a requirement for parent companies to establish procedures that apply to the entire group.

8.2 Recent or Forthcoming Changes

To the best of the authors' knowledge, there are no recent or forthcoming changes to Swedish AML legislation that are relevant to gambling operators.

8.3 AML Requirements

Upon registration with the licence holder, an initial customer due diligence must be carried out. Such due diligence should also be conducted in the following situations:

- on single transactions that amount to EUR2,000 or more (or equivalent value in other currencies); and
- on transactions that fall below EUR2,000 (or equivalent value in other currencies) that the licence holder realises are connected, and

that have a combined amount of at least EUR2,000.

All licence holders must implement a risk-based assessment of its customers with regard to money laundering and terrorist financing. Such general risk assessment will result in a "high", "normal" or "low" risk category for each customer, which will be monitored and possibly changed from time to time. The risk assessment should be used as a key component of the AML work and must include an assessment of how the licence holder's products and services could be used to launder money or finance terrorism. In this regard, the SGA has provided the following guidance on risk factors.

- High risk – unusual or irrational gambling patterns, unusually large transactions, reluctance to answer customer due diligence questions or provide documentation to prove the origin of the money.
- Normal risk – customers who set deposit limits higher than a total of EUR2,000 and/or gamble for more than EUR2,000 during a 12-month period can be considered normal risk if there is no indication that the customer should be classified as high risk.
- Low risk – customers that make deposits totalling less than EUR2,000 during 12-month period can be considered low risk. However, it is important to consider high deposit limits. If a customer sets remarkably high deposit limits when registering, or during the business relationship, the licence holder must be vigilant that gambling does not escalate rapidly – even though the customer initially poses a low risk of money laundering.

All licence holders must adopt routines to counter money laundering and terrorist financing, which should complement the general risk

assessment. The routines shall include the following main duties:

- monitoring and reporting;
- measures for consumer knowledge and due diligence;
- training of employees; and
- compliance and internal control management.

9. Advertising

9.1 Regulatory/Supervisory Agency

The SGA and the Swedish Consumer Agency conducts supervision of the marketing of gambling services on the Swedish market. In brief, the SGA supervises marketing issues that relate directly to gambling operations such as bonus campaigns, etc. The Consumer Agency supervises the compliance with general marketing restrictions for gambling services – for example, the requirement of moderate marketing of gambling services.

The Swedish Public Prosecutor's Office enforces criminal matters.

9.2 Definition of Advertising

Under the Swedish Marketing Act, the concept of marketing is defined as “advertising and other business activities intended to promote the sale of and access to products, including a trader's act, omission or other measure or conduct before, during or after the sale or delivery of products to consumers or traders”. In case law, the concept of advertising has been given an extensive interpretation.

9.3 Key Legal, Regulatory and Licensing Provisions

The key legal provisions governing advertisement of gambling products and services are set

out in the Swedish Marketing Act and in Chapter 15 of the Swedish Gambling Act.

9.4 Restrictions on Advertising

Under the Swedish Gambling Act, all marketing of gambling services must be “moderate” (*måttfullhet*). In essence, this means that advertisements for gambling services must be designed with additional caution and should not come across as aggressive or overly outreaching. In particular, advertisements may not insinuate that certain games are free if they require a bet or that they are risk free, etc.

At the time of writing (November 2022), there is no case law from the appellate courts on the issue of moderate gambling marketing and the few first instance court judgments include somewhat conflicting statements as to how the assessment should be carried out in practice.

In addition to the moderation requirement, the following specific regulatory restrictions on advertising of gambling services apply.

- Advertisements for gambling services may not be directed at people under the age of 18 nor people who have registered with the self-exclusion registry. If a customer has closed their account with the licence holder, direct marketing is only allowed if consent has been provided from the customer.
- Advertisements for gambling services must contain clear information about the minimum age to gamble. In physical premises where gambling services are provided and in all marketing (except for radio advertising), contact information for an organisation that provides information about and support for gambling problems must be provided.
- When entering into sponsorship agreements, licence holders must ensure that logos and

names of gaming products or services do not appear on products intended for people under the age of 18.

- Bonus offers are only allowed when the customer gambles with the licence holder for the first time. In case law, the concept of a bonus been widely interpreted and includes rewards, gifts, (non-monetary) prizes, VIP incentives, cash backs and free spins.

9.5 Sanctions/Penalties

In minor matters within its mandated field, the Swedish Consumer Agency may issue injunctions on penalty of a fine to cease certain marketing activities. In cases of more significance, the Agency will instead seek such injunctions before the Patent and Market Court and Patent and Market Court of Appeal. The Agency may also request that the courts issue a marketing fine.

Within its separate parallel field, the SGA may order that the licence conditions be amended and issue:

- injunctions or corrective measure orders on penalty of fine; or
- remarks, warnings and sanction fees.

In exceptionally severe cases, the SGA may also revoke gambling licences with immediate effect. It is possible to appeal such decisions and, where relevant, request for a stay of execution to suspend the immediate effect.

9.6 Recent or Forthcoming Changes

The pending legislative bill includes a provision to nuance the restriction that all marketing must be “moderate”. In short, the bill includes a suggestion that the assessment of “moderation” should consider the risk of the game in question. It is highly unclear whether the provision in

its current form will be accepted by the newly appointed Parliament.

10. Acquisitions and Changes of Control

10.1 Disclosure Requirements

All entities and individuals that directly or indirectly hold 10% or more of the shares or voting rights in a licence holder are subject to approval from the SGA and need to provide documentation on its board members and management personnel, along with corporate and financial documentation.

10.2 Change of Corporate Control Triggers

Any changes to the direct or indirect ownership of a licence holder or the key personnel mentioned in **10.1 Disclosure Requirements** must be reported to the SGA within 14 days of the decision that will trigger the change. To process such notifications, a fee of SEK800 must be paid to the SGA.

10.3 Passive Investor Requirements

As described in **10.1 Disclosure Requirements**, indirect owners of the licence holder (ie, those with 10% or more of the shares or voting rights) are also subject to disclosure requirements.

11. Enforcement

11.1 Powers

The SGA has a mandate to enforce the restrictions on gambling set forth in the Swedish gambling regulations and the Act on Measures Against Money Laundering and Terrorist Financing. The enforcement is carried out under administrative law. The SGA's decisions

can be appealed to the Administrative Court of Linköping. If leave to appeal is granted, such judgments may be appealed to the Administrative Court of Appeal in Jönköping and then subsequently to the Supreme Administrative Court. Except for certain cases, the legal effect of the SGA's decisions is suspended until it has become final – that is, upon the expiry of the appeal deadline or when all appeal possibilities have been exhausted.

Depending on the severity of the violation of the Gambling Act or the applicable licence obligations, the SGA has a mandate to:

- order the licence holder to remedy the matter (on penalty of fine);
- issue an injunction (on penalty of fine);
- order that the licence conditions be amended;
- issue a remark, which could be combined with a sanction fee ranging from SEK5,000 to 10% of the annual gross gaming revenue (GGR);
- issue a warning, which could be combined with a sanction fee ranging from SEK5,000 to 10% of the annual GGR; or
- fully revoke the licence of the licence holder.

If a licence holder fails to provide any information that it is obligated to provide under the Gambling Act, the SGA may issue a delayed payment fine of maximum SEK100,000.

The SGA may refrain from ordering a sanction if:

- the violation is considered minor or excusable;
- the licence holder has remedied the matter; or
- any other authority has issued sanctions owing to the violation and such sanction is deemed sufficient.

The powers of enforcement vested with the Swedish Consumer Agency are regulated under administrative law. However, the Agency's decisions are appealed to the Patent and Market Court and Patent and Market Court of Appeal, and such cases are normally administered under the Swedish Code of Civil Procedure.

In cases involving criminal offences, the Swedish Public Prosecutor's Office is the appointed enforcement authority. Such enforcement is conducted under general criminal procedural law, which vests the prosecutor with more invasive remedies in comparison with the administrative remedies available to the SGA and the Swedish Consumer Agency.

11.2 Sanctions

During the first few years following the re-regulation of the Swedish gambling market, the SGA has focused particularly on violations of the bonus restriction and the ban on providing betting on matches where the majority of participants are under the age of 18. It has issued several warnings, combined with sanction fees, in relation to such violations.

Moreover, during this period, the SGA has revoked gambling licences as a result of insufficient RG and AML measures, in addition to violations of the bonus restriction. Licences have also been revoked by the SGA in response to operators' passivity in launching their business following the grant of the licence. The SGA has also issued injunctions against 31 foreign unlicensed operators that have targeted their gambling services at the Swedish market.

The Swedish Consumer Agency has not been particularly active in the field of gambling since 2019 but has enforced two matters concerning the moderate marketing requirement. The Pat-

ent and Market Court issued injunctions on penalty of fine in both cases, neither of which were appealed to the appellate court.

11.3 Financial Penalties

As mentioned in **11.2 Sanctions**, the SGA may issue sanction fees and delayed payment fines. Although the range of the sanction fee is set by the Gambling Act (SEK5,000 to 10% of the annual GGR), the issue of how the size of the sanction fee should be determined within that range and which factors should be considered is currently pending before the Supreme Administrative Court. The highest issued sanction fee during the first three years since the re-regulation of the gambling market amounted to SEK100 million.

11.4 Personal Sanctions

Technically, an individual holding a gambling licence may become subject to financial penalties.

12. Recent Trends

12.1 Social Gaming

Social gaming is not encompassed by the Swedish Gambling Act.

12.2 Esports

A licence for betting services is required in order to offer betting on esports.

12.3 Fantasy Sports

According to the legislative bill, fantasy sports generally qualify as betting and require a licence. In a recent decision concerning an online football manager game involving prizes, the SGA held that the arrangement of such game was considered provision of betting services within the meaning of the Gambling Act and therefore

requires a licence. No sanction was issued, and the decision was thus not appealable.

12.4 Skill Gaming

The Gambling Act does not encompass games of skill – that is, games where the result is entirely or almost entirely decided by skill (unlike combination games, which require a licence) – and therefore they are not subject to any licence requirements.

12.5 Blockchain or Cryptocurrency

Under the Payment Services Act, licence holders may only accept deposits and issue payouts from payment service providers. Hence, blockchain/cryptocurrency payments are not allowed.

13. Tax

13.1 Tax Rate by Sector

Gambling services are subject to a tax rate of 18% of the monthly profit. The profit amounts to the difference between the total bets minus the total payouts. Only bets and payouts that concern the Swedish market should be included.

Players' gambling winnings from licensed operators are tax-free in Sweden. Conversely, winnings that stem from unlicensed operators are subject to tax.

14. Anticipated Reform

14.1 Anticipated Reform

To the best of the authors' knowledge, there are no recent or forthcoming changes to Swedish tax legislation in relation to gambling services.

SWEDEN LAW AND PRACTICE

Contributed by: Stefan Widmark, Hans Eriksson and Petter Larsson, **Westerberg & Partners**

Westerberg & Partners is a Swedish boutique law firm specialising in IP law and dispute resolution. With 23 IP specialists in its team, **Westerberg & Partners** is one of the market leaders in Sweden and one of the largest IP firms in the Nordics. The work of the IP team includes regulatory law matters in highly regulated sectors, such as the gambling sector. **Westerberg & Partners'** gambling law team, which includes two partners and five or six associates, has ex-

tensive experience with advising many of the largest commercial players on the Swedish gambling market, including commercial gambling operators and media companies. In addition to other gambling law matters, the team has assisted commercial operators entering the Swedish gambling market following the 2019 re-regulation and litigated many high-profile pilot cases in which the new rules apply before Swedish courts.

Authors



Stefan Widmark is a partner at **Westerberg & Partners**. He specialises in IP, media and entertainment, and marketing law. Within the media and entertainment field, his main

experience lies in film, TV, music, and gambling law. Stefan is continuously ranked as a leading lawyer in his specialist fields. After almost 20 years, he is back working extensively with gaming law matters for both Swedish and international clients.



Hans Eriksson is a partner at **Westerberg & Partners** whose practice is focused on copyright and related rights, trade marks, unfair marketing, trade secrets and gambling law. Hans advises

clients in a wide range of industries and sectors, including entertainment and media, pharma, fashion and gambling. He regularly lectures in copyright and trade mark law at Stockholm University, Uppsala University and Lund University, in addition to speaking and writing on a wide variety of IP topics.



Petter Larsson is a senior associate at **Westerberg & Partners**. Petter specialises in gambling law and regularly advises major online gambling operators on regulatory day-to-

day issues, as well as counselling in litigation. He has experience in assisting operators with licence applications and has represented clients in regulatory court proceedings in all administrative court instances, in addition to acting as counsel in general litigation related to damages for responsible gambling issues. Petter also specialises in IP law and other intensely regulated sectors.

Westerberg & Partners

Regeringsgatan 66
Stockholm
Sweden

Tel: 0046 8 5784 0300
Email: info@westerberg.com
Web: <https://westerberg.com/>



Trends and Developments

Contributed by:

Stefan Widmark, Hans Eriksson and Petter Larsson
Westerberg & Partners see p.23

New Government – New Regime?

Following a shift of parliamentary power in the Swedish general election in September 2022, a new multiparty government was appointed for the next four years. Accordingly, the government that was in power during the years leading up to and following the 2019 re-regulation of the Swedish gambling market was dismissed.

At the time of writing (November 2022), it is too early to conclude which approach the new government will adopt but the past two years have made it clear that the once unified approach between the right and left blocs during the run-up to re-regulation has gravitated towards split positions on certain issues. A first indication of the new government's approach and the level of uniformity between the blocs will shortly be given, as the newly appointed Swedish Parliament is scheduled to vote on the pending legislative bill drafted by the former government on 23 November 2022.

From a fiscal perspective, the Swedish Agency for Public Management (SAPM) - which is tasked with evaluating the first four years following the re-regulation of the Swedish gambling market - has confirmed that the re-regulation has not resulted in less income from gambling for the Swedish state. Ultimately, the reduced income from the state-owned gambling operator has been compensated by tax income from the licensed operators. Any concerns about a decrease in state income from gambling should therefore be dismissed and the Swedish state's general position on re-regulation should not be negative in this regard.

Market Trends – Continued Dominance by Large Operators

Competition in the Swedish gambling market continues to be dominated by a handful large licence holders that hold a significant portion of the market share. For online gambling and betting, 67% of the total market gross gaming revenue (GGR) derives from the five biggest licence holders.

Part of the explanation for this dominance could be the regulatory burden, which might be too costly for smaller operators. Given that many of the initially issued five-year licences will expire in 2023, the upcoming year will serve as a first indication of operators' interest in competing in the Swedish gambling market in the future. According to market surveys conducted by the Swedish Gambling Authority (SGA), nearly all of the approximately 100 current licence holders have indicated that they intend to renew their current licences.

Furthermore, although the sector anticipated a high number of mergers among licence holders during the first few years following re-regulation, the number has remained surprisingly low. The reasons for this are unclear, but it is worth noting that there remains a general feeling throughout the gambling sector that the number of licence holders will decrease within the next five years.

Image and Reputational Challenges

The Swedish gambling sector continues to face serious challenges when it comes to image.

This is likely to be an important reason why certain Nordic banks are distancing themselves from gambling operators. The issue has mainly affected non-Swedish operators and generally seems to stem from the Nordic banks' approach to corporate social responsibility, which apparently does not align well with public perception of the gambling sector, but also - to some extent - AML issues.

The situation has become a major challenge for many licence holders, as they have been shut out from the use of well-established payment applications operated by Nordic banks as a result and these are in high demand from customers. It remains to be seen how and to what extent the balance between domestic and foreign operators will be affected by the banks' new approach. However, given the customers' high appreciation of the established payment methods in the Nordic region, the issue is currently a top priority among the shut-out operators - and these include some of the largest operators on the market.

Nevertheless, the negative image of the gambling sector is unlikely to go away anytime soon. It is clear, though, that the operators in the Swedish market will continue searching for ways to improve their reputation. Initiatives have been taken, for example, to disclose the amount of revenue presumed to derive from gambling problems separately in order to increase transparency within the sector.

Channelling of Customers to Licensed Operators

Further, the question of how to direct customers from unlicensed operators to licensed operators remains one of the most discussed issues in the Swedish gambling community - at least among the gambling operators. According to data from

the SAPM report, the share of gambling with licensed operators in the competitive part of the Swedish market has increased from less than 50% prior to re-regulation to approximately 87% in 2021.

Although the increased channelling of customers to licensed operators is seemingly positive, the Swedish government had expected the number to be more than 90% previously. The 87% figure does not refer to the share of customers in the Swedish market using unlicensed platforms but rather to the share of the total value of bets on unlicensed platforms, which is estimated at approximately SEK2.4 billion annually.

As regards the share of customers, the unanimous conclusion from both the SGA and the gambling operators is that the percentage of gambling on unlicensed platforms could be derived from a significantly lower number of customers who are gambling with significant monetary values. If that conclusion is true, it is alarming from a gambling abuse perspective in light of another trend in the Swedish gambling market - that is, how the portion of people that use gambling services decreases while the aggregated value of bets is increasing.

As for the measures taken to counter unlicensed operators, it appears from the SAPM report that the current remedies available for shutting out unlicensed operators from the Swedish market are insufficient. The SGA established that 31 operators breached the ban on providing gambling to Swedish customers without a Swedish licence and have reported the cases to the police. However, all criminal matters that have been initiated were closed by the Swedish public prosecutor. Moreover, 24 of the 31 unlicensed operators that became subject to injunctions in

2018-22 have continued to direct their services towards the Swedish market.

It is notable that all these 24 operators are based in Curaçao, which has led the SGA to reach out to the gambling authority in Curaçao in an attempt to address the problem - albeit without any result. As a consequence, the SGA has begun to join together with gambling authorities in the UK, the Netherlands, Malta and Gibraltar to put joint pressure on states like Curaçao. The co-operation with regulators in other jurisdictions and international organisations is likely to continue.

The above-mentioned pending legislative bill, which includes new remedies for the SGA to target unlicensed operators, is highly interesting in this regard and has been supported by the SAPM. Irrespective of whether the new legislative bill is accepted, the discussion of which new regulatory measures should be implemented to tackle gambling on unlicensed platforms – and which regulatory measures could have an opposite effect – is likely to remain a highly relevant talking point in the Swedish gambling community.

One of the most debated regulatory restrictions concerning the channelling issue is the current restriction that only allows operators to offer a bonus the first time the customer gambles with that operator. On this point, the SAPM report confirms the general position of the gambling operators - namely, that this restriction negatively affects the channelling of customers to licensed operators. Moreover, the report concludes that options to monitor customer behavior and take sufficient responsible gambling measures are negatively affected, as customers have no incentive to stay with the same operator so instead seek new bonus offers with other operators - including unlicensed operators. Yet, apart from an exception for licence holders that exclusively provide gambling services for public good, the pending legislative bill contains no proposition to amend the current bonus restriction.

In summary, the Swedish gambling sector is about to enter its next chapter following the re-regulation of the monopoly. The upcoming year and the pending vote on the new bill will serve as a good indication of which direction the new government will take. This, in turn, will set the agenda for the SGA's continued enforcement.

Westerberg & Partners is a Swedish boutique law firm specialising in IP law and dispute resolution. With 23 IP specialists in its team, **Westerberg & Partners** is one of the market leaders in Sweden and one of the largest IP firms in the Nordics. The work of the IP team includes regulatory law matters in highly regulated sectors, such as the gambling sector. **Westerberg & Partners's** gambling law team, which includes two partners and five or six associates, has ex-

tensive experience with advising many of the largest commercial players on the Swedish gambling market, including commercial gambling operators and media companies. In addition to other gambling law matters, the team has assisted commercial operators entering the Swedish gambling market following the 2019 re-regulation and litigated many high-profile pilot cases in which the new rules apply before Swedish courts.

Authors



Stefan Widmark is a partner at **Westerberg & Partners**. He specialises in IP, media and entertainment, and marketing law. Within the media and entertainment field, his main

experience lies in film, TV, music, and gambling law. Stefan is continuously ranked as a leading lawyer in his specialist fields. After almost 20 years, he is back working extensively with gaming law matters for both Swedish and international clients.



Hans Eriksson is a partner at **Westerberg & Partners** whose practice is focused on copyright and related rights, trade marks, unfair marketing, trade secrets and gambling law. Hans advises

clients in a wide range of industries and sectors, including entertainment and media, pharma, fashion and gambling. He regularly lectures in copyright and trade mark law at Stockholm University, Uppsala University and Lund University, in addition to speaking and writing on a wide variety of IP topics.



Petter Larsson is a senior associate at **Westerberg & Partners**. Petter specialises in gambling law and regularly advises major online gambling operators on regulatory day-to-

day issues, as well as counselling in litigation. He has experience in assisting operators with licence applications and has represented clients in regulatory court proceedings in all administrative court instances, in addition to acting as counsel in general litigation related to damages for responsible gambling issues. Petter also specialises in IP law and other intensely regulated sectors.

Westerberg & Partners

Regeringsgatan 66
Stockholm
Sweden

Tel: 0046 8 5784 0300
Email: info@westerberg.com
Web: www.westerberg.com



CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com