



DECREE-LAW NO. 98/2018, 27 NOVEMBER

I. CHANGE OF THE GAMBLING LAW.

The Decree-Law no. 98/2018, 27 November, implements the **transfer of powers** of the so far direct administration agency competent of the Portuguese State to the **local authorities' bodies** regarding the **authorization for the exploration of related modalities of gambling** of fortune or chance or other forms of gambling, as raffles, tombolas, sweepstakes, advertising contests, contests of knowledge and quizzes.

This decree-law introduced amendments to the Decree-Law no. 422/89, 2 December, as currently worded (which reformulated the Gambling Law), and to the Decree-Law no. 14/2009, 14 January, as currently worded (which has established acts practiced by the civil governors and by the civil governments by which fees are charged and the respective regime).

II. FRAMEWORK.

The mentioned transfer is framed by a public policy which aims to **speed up and simplify the public procedures** and decentralize the exercise of powers to the local authorities, promoting the management of public services under a proximity perspective. This public policy has been previous and structurally implemented by Law no. 50/2018, 26 August (which approved the Framework Law of the transfer of powers to local authorities and inter-municipal entities).

III. WHAT CHANGES?

i) Change of the qualified authority to exercise the power to authorize the exploration of related modalities of gambling of fortune or chance or other forms of gambling, notably advertising contests.

The general secretariat of the Portuguese Ministry of Internal Affairs (MAI) will no longer be empowered to grant the authorization. The requirement for the mentioned authorization, **which was provided up to now by the general secretariat, will now be subjected to the President of the Municipal Chamber's of the respective territory decision**, within the following terms:

- a) Exploration limited to the **territorial area of the municipality**, the competence is exercised by the **President of the respective Municipal Chamber**;
- b) Exploration **not limited to the territorial area of the municipality**, the competence is exercised by the **President of the Municipal Chamber of the residence situation or headquarters of the entity that carries out the exploration**.

The **President of the Municipal Chamber stipulates the conditions** which deems suitable for the exploration of the related modality of gambling of fortune or chance, which shall be included in the authorization granted, and determines the respective audit regime.

It will be up to the **Municipal Assembly** of the respective municipality **to provide for the amount of the fee to be charged for the issuance of the operating authorization**. The amount of the fees charged will constitute **a revenue for the municipality**.

ii) Change of the legal definition of «related modality of gambling of fortune or chance».

Henceforth the legal definition of «**modality related to games of fortune or chance**» will expressly include the term «**pre-determined in the first place**»¹ concerning the economic value of the prizes to be awarded. Prizes must be things with economic value **fixed before the beginning of the operation**.

The predetermination of the awards' economic value is recognized by the Portuguese jurisprudence as a typical element of the modality related to games of fortune or chance, although it is not unanimous to identify this characteristic as a distinctive criterion between games of fortune or chance and the related modalities of games of fortune or chance.

iii) Increase of the value of the fines.

For administrative offence proceeding by a **natural person**, the amount of the fines was raised from € 250.00 up to **€ 750.00** (minimum limit) and from € 2,500.00 up to **€ 3,740.98** (maximum limit), which represents an increase of **67%** and **33%**, respectively.

Already for administrative misconduct to **legal person**, the value of the fines was raised from € 2.500,00 up to **€ 3,750.00** (minimum limit) and from € 25,000.00 euros up to **€ 37,500.00** (maximum limit), which represents an increase of **33%** in both cases.

iv) Alteration of the qualified authorities to investigate administrative offences proceedings and to impose fines.

The decree-law stipulates that the reporting authorities will be responsible for carrying out the investigation of alleged administrative offences and the imposition of fines, howbeit without specifying which entities are involved. In what concerns the fines revenue, the decree-law provides for its distribution, in different proportions, between the instructing entity and the reporting entity.

v) Production of effects.

The decree-law takes effect on the 1 January 2019.

vi) Transitional legal framework.

The transitional regime for the transfer of powers of the State direct administration competent agency to the **local authorities' bodies** is defined in two acts: Law no. 50/2018, 16 August, and Decree-Law no. 98/2018, 27 November. This last decree-law establishes that the municipalities have up to 60 calendar days after the entry into force of this decree-law (2 December 2018) - meaning, until the end of January 2019 - to declare that do not wish to exercise, in 2019, the powers, postponing the transfer. Notwithstanding this deadline, the legal document takes effect on the 1 January 2019, which means that, from this date on, in its absence, the local authorities will become the qualified authorities in what concerns the granting of the exploration of related modalities of gambling of fortune or chance. In the case that the transfer of powers does not occur during 2019 and the municipalities still do not want to act under those powers in 2020, should adopt the same procedure as 2019, postponing once more the transfer. Ultimately, the transfer of powers will have to take place until 1 January 2021.

⁽¹⁾ The new draft of article 159 of the Gambling Law: *“Related modalities of games of fortune and chance are operations offered to the public in which the hope of gain remains jointly in the luck and skill of the player, or only in luck, and that award as prizes things with predetermined economic value in the first place.”*

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