

**REPORT ON THE RECENTLY RELEASED INITIAL NORMS ISSUED TO  
REGULATE LAW No. 13,756/2018, WHICH LEGALIZED  
FIXED ODDS SPORTS BETTING IN BRAZIL**

**28<sup>th</sup> July 2023**

**I. INTRODUCTION**

a. Having regard that the Bolsonaro Administration did not issue the regulations for Law No. 13,756/2018 (the “Law”), which legalized fixed odds sports betting in Brazil as a form of lottery, within the legal deadline provided by such law, the new Lula Administration started to work on such regulations shortly after its investiture at the beginning of 2023.

b. It has taken the Lula Administration half a year to come up with the initial norms they believe are the most appropriate for establishing the legal framework for this sector, namely: a provisional measure and a bill of law. We address the contents of these norms in this note.

c. Please note that the legal framework in question is that governing the exploitation in Brazil ONLY of fixed odds sports betting. In this regard, until e-sports are legally considered to be a “sport” in Brazil, the legal framework at hand would not encompass e-sports betting. Other gaming verticals are also not covered by these norms. Their legalization in Brazil is dependent on another bill of law currently sitting in the Senate being approved.

**A. PROVISIONAL MEASURE NO. 1,182/23 (the “Provisional Measure”)**

**a. General Comments**

1. On 25th July 2023, the long-awaited Provisional Measure was published in the Official Gazette, amending the above-mentioned Law. The commercial exploitation of such activity throughout Brazilian territory, which initially was permitted exclusively to the Federal Union, can now be conducted also by private entities, since the word “exclusively” was deleted from the Law’s wording, such exclusion all confirming the possibility (as confirmed by the 2020 Brazilian Supreme Court – STF) for States and Municipalities to also engage in this exploitation, either directly or by delegation to private entities.

2. In accordance with the Provisional Measure, the fixed odds sports betting lottery is to be granted, permitted or authorized for consideration by the Ministry of Finance and is to be operated exclusively in a competitive environment without limitation to the number of licenses granted (i.e., under the open licensing model that Montgomery has advocated for years), with the possibility of being marketed in any commercial distribution channels, both physical and virtual, subject to the regulations of the Ministry of Finance.

3. In the context of the foregoing, Brazilian companies or Brazilian branches<sup>1</sup> of foreign entities satisfying the requirements still to be set out in the administrative ordinances to be issued by the Ministry of Finance, in supplementation of the Provisional Measure and the Bill of Law, may apply for authorization to operate fixed odds sports betting.

4. The Provisional Measure also grants the Ministry of Finance the authority to authorize, permit and grant, standardize, regulate and supervise the operation of the fixed-odds betting lottery and to establish the license fee. There are currently rumours, especially after Special Secretary José Francisco Manssur, in an interview earlier this week to TV Bandeirantes, mentioned that there could be more “flexibility” on the amount of the license fee, which had previously been announced to be BRL30 million, for a five-year national license, could be altered.

5. The Ministry of Finance can also, in the exercise of its supervisory and inspection authority, request from operators technical, operational, economic-financial and accounting information, data, documents, attestations, certificates and reports related to the activities conducted, ensuring legal secrecy and data protection of personal information received where appropriate.

6. The Provisional Measure also authorizes the charge of a fine, in the amount of BRL10,000.00 (ten thousand reais), which may be increased by up to 20 (twenty) times, if necessary, to ensure its effectiveness, in case of refusal, omission, falsehood or unjustified delay in providing information or documents requested by the Ministry of Finance.

7. The Provisional Measure also prohibits the direct or indirect participation of shareholders and other persons related to fixed odds betting operators in football corporations and professional sports organizations and to act as a manager of a Brazilian sports team.

8. Further, the Provisional Measure also requires operators to adopt security and integrity mechanisms, in accordance with regulations to be issued by the Ministry of Finance and Law No. 13,709/18 (the Brazilian General Data Protection Law). Operators must also be part of a national or international organization monitoring sports integrity. In this regard, bets on individual player actions, such as fouls, yellow/red cards, sidekicks and the like, may be forbidden by the Ministry of Finance at any time.

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<sup>1</sup> It is generally less bureaucratic and, therefore, more expeditious and less costly, to establish a physical presence in Brazil by incorporating a Brazilian company, usually as a wholly owned subsidiary assuming the structure of a limited liability company, rather than opening a local branch. The opening of a local branch requires the foreign company to apply for authorization from the Brazilian Federal Government first and only thereafter filing the corresponding corporate documentation with the local Commercial Registry. Montgomery can provide additional information on the incorporation process and support the same, if required

**b. Tax aspects**

9. The main surprise introduced by the Provisional Measure was the increase in the GGR<sup>2</sup> tax/social destinations to **18%<sup>3</sup>**, triggered by a higher percentage being destined to the Ministry of Sports (3%). As a result, the combined GGR tax/social destinations now comprises the following:

DESCRIPTION	RATE
Social Security Contribution	10%
Educational institutions	0.82%
National Public Safety Fund	2.55%
Sports entities/brand assignment	1.63%
Contribution to the Ministry of Sports	3.00%
<b>Total</b>	<b>18%</b>

10. In practical terms, operators will collect the bets, pay the winnings to bettors (which will be subject to personal withholding income tax, in the current rate of 30% [thirty percent], when they exceed the current exemption threshold of R\$2,112.00), pay applicable corporate taxes (Corporate Income Tax – IRPJ, Social Contribution on Net Profits – CSLL, PIS/COFINS) and municipal service tax and, on the remaining balance apply the GGR tax of 18%, leaving 82% for operators to conduct their business.

11. In connection with the foregoing, Brazilian entities are subject to corporate taxation (IRPJ, CSLL, PIS, COFINS), calculated pursuant to the tax regime elected taking into account the total annual expected turnover (with the presumed profit regime being available when annual turnover is no more than BRL78 million in the preceding tax year, or actual profit, when annual turnover exceeds BRL78 million).

12. In addition to corporate taxation, municipal service tax (ISS) will also potentially apply to the exploitation of fixed odds sports betting on the basis that the activity figures in the list of taxable services. Rates for this tax vary from one municipality to another and range between 2% and 5%.

13. In this regard, it is relevant to mention that in the City of São Paulo, Law No. 17,875/2022 approved a reduction of ISS to the lowest rate of 2% for sectors linked to the management and provision of the following services: (i) betting, raffles, prize giving contests, and similar products; (ii) sports or physical or intellectual skill competitions; and (iii) services related to remote monitoring and tracking.

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<sup>2</sup> Gross Gaming Revenue.

<sup>3</sup> Initially, the Lula Administration had announced that the GGR tax (levied in addition to other corporate and service taxes) would be 15%. Then such rate was increased to 16% and now the surprise was the staggering 18%.

14. Further, since most local operators will be subsidiaries of foreign entities, it must be noted that income, capital gains and other amounts paid, credited, delivered, employed, or remitted to a corporate entity domiciled abroad, are subject to Withholding Income Tax (“IRRF”), at the rate of 15%.

15. In the context of the above, it should be noted that it is important to ascertain if a double tax treaty exists between Brazil and the country where the foreign shareholder is domiciled (respectively, country of remittance and country of destination), as well as if the country of destination is considered a tax haven, when the IRRF rate would be increased to 25%, due to a surtax of 10%.

16. Moreover, in addition to IRRF, Tax on Financial Transactions - IOF "Exchange", at the rate of 0.38%, is levied on the amount remitted at the time the foreign exchange transaction is closed to remit the currency of the country of destination.

17. The Provisional Measure also did not revoke the Inspection Fee contemplated in the Law. Therefore, corporate entities operating fixed odds sports betting are also subject to the monthly payment of the Inspection Fee, as provided in article 29 of the Law, which ranges from BRL54,419.56 to BRL1,944,000.00, depending on monthly payout of winnings. The complete table indicating all Inspection Fee brackets remains as follows:

<b>Previous Month’s Payout</b>	<b>Monthly Inspection Fee</b>
Up to BRL30,837,749.76	BRL54,419.56
From BRL30,837,749.77 to BRL51,396,249.60	BRL90,699.26
From BRL51,396,249.61 to BRL85,660,416.00	BRL151,165.44
From BRL85,660,416.01 to BRL142,767,360.00	BRL251,942.40
From BRL142,767,360.01 to BRL237,945,600.00	BRL419,904.00
From BRL237,945,600.01 to BRL396,576,000.00	BRL699,840.00
From BRL396,576,000.01 to BRL660,960,000.00	BRL1,166,400.00
Above BRL660,960,000.01	BRL1,944,000.00

18. Finally, it is important to note that a tax reform is currently being discussed at the Brazilian Congress and could further increase the above-mentioned tax burden.

**c. IP Rights and image use aspects**

19. The Ministry of Finance will regulate the form and procedure whereby authorizations will be granted for all fixed-odds sports betting operators to use: (i) the image, name or sporting nickname and other IP rights of athletes; and (ii) the names, brands, emblems, anthems, symbols and the like of sports organizations.

**d. Marketing and advertising aspects**

20. The Provisional Measure establishes that the communication, advertising, and marketing actions of fixed-odds sports betting operators should follow the regulations of the Ministry of Finance, self-regulation being encouraged.

21. It also establishes that operators must promote informative actions to raise awareness of inherent risks among bettors and to prevent pathological gambling disorders, by producing codes of conduct and the dissemination of good practices pursuant to the regulations to be issued by the Ministry of Finance.

22. The Provisional Measure goes no to determine that unlicensed operators will be prevented from offering their services in the Brazilian market, advertising in Brazil or sponsoring Brazilian sporting entities. If such activities are detected, internet service providers and internet application providers must, upon notification by the regulator, appropriately block websites or remove applications related to unlicensed sports betting activities. This restriction will be enforceable after the issuance of specific regulations by the Ministry of Finance.

**e. Payment of winnings**

23. The Provisional Measure establishes that bettors lose the right to receive their winnings or to request refunds if the payment is not claimed within 90 (ninety days), counted as from the date of the first disclosure of the result of the actual event object of the bet.

24. The amounts of unclaimed prizes will be reverted to the Brazilian Scholarship Financing Programme (“Fies”) until 24<sup>th</sup> July 2028, subject to the financial and budgetary programming of the Federal Government.

**f. Payment means and institutions**

25. The Provisional Measure establishes that the offer of transactional accounts allowing the bettor to conduct payment transactions for betting and the receiving their winnings, is exclusive to institutions authorized to operate by the Brazilian Central Bank (“BACEN”).

26. In other words, financial institutions that are not licensed to operate by BACEN will be prevented from conducting financial transactions for the payment of winnings.

27. The Provisional Measure also establishes that BACEN will regulate payment arrangements to prevent the fixed odds sports betting payments conducted by unauthorized/non-licensed operators.

**g. Offenses and penalties**

28. The Provisional Measure establishes that it is a punishable administrative offence to operate fixed-odds sports betting activities without prior authorization from the Ministry of Finance and to conduct transactions or activities that are prohibited, unauthorized or in disagreement with the license granted.

29. The absence of tax information and not displaying or not providing documents, papers and bookkeeping records, including in electronic form, within the legal deadlines, in the forms and under the conditions established by the competent administrative body in the exercise of its inspection activity, denying or hindering access to data systems, will also constitute an administrative offense.

30. Offenses will be punishable by sanctions ranging from warnings to fines between 0.1% and 20% of turnover in the previous year, limited to BRL2 billion per offense, with partial or total suspension of activities also being contemplated, all requiring administrative sanctioning proceedings.

**h. Legal restrictions**

31. With a view to promoting responsible gaming and preventing match fixing, the Provisional Measure dictates that the following persons are prohibited to bet:

- a) Owners, officers, directors, persons with significant influence, managers or employees of the operator;
- b) Public agents with attributions directly related to the regulation, control and supervision of the activity at the federative level in which they exercise their authority;
- c) Minors (under 18s);
- d) Persons who have or may have access to the computerized systems of fixed-odds sports betting operations;
- e) Persons who have or may have any influence on the outcome of a real sports event that is the object of the fixed-odds sports betting;
- f) Persons blacklisted by national credit protection agencies<sup>4</sup>; and
- g) Other cases to be established by the Ministry of Finance.

32. Finally, such prohibitions extend to spouses and relatives in a straight- and collateral-line including persons prevented from participating, directly, or indirectly, as a bettor.

**i. Timing and processing at Congress**

33. The Provisional Measure is classified as an urgent procedure. Therefore, the next to be taken at Congress steps are as follows:

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<sup>4</sup> The Federal Government recently launched a programme called “Desenrola” (which could translate into English as “Untangle”) to support debtors in negotiating their debts with a view to having their names excluded from credit protection agency blacklists.

- a) Provisional Measure published in the Official Gazette: 25<sup>th</sup> July 2023;
- b) Deadline for amendments (known as *emendas*, in Portuguese) to the Provisional Measure: 31<sup>st</sup> July 2023;
- c) Deadline for the Provisional Measure to be voted by Congress: 22<sup>nd</sup> September 2023;
- d) Extension: Congress can extend the deadline for a vote for an additional 60 days; so the Provisional Measure could be voted on by 22<sup>nd</sup> December 2023 (based on par. 7 of art. 62 of the Federal Constitution);
- e) Consequences: In the event Congress does not vote on the Provisional Measure by 22<sup>nd</sup> December 2023, the Provisional Measure will forfeit and no longer be part of the Brazilian legal system (with the changes to the Law not becoming definitively effective).

34. In summary, the Provisional Measure introduces the general parameters for the regulation of fixed odds sports betting, which will effectively require the issuance of supplementary administrative ordinances by the Ministry of Finance, which will be granting the authorization/license and exploration of the activity.

35. In this regard, operators will only be able to operate and subject to the determinations brought by the Provisional Measure after the publication of Ministry of Finance ordinances. In the above-mentioned interview granted by Special Secretary José Francisco Manssur, he mentioned that he envisages such administrative ordinances to be issued soon and operators being duly licensed and capable of conducting their activities in a licensed market 180 days after the administrative ordinances have been issued.

## **B. BILL OF LAW No. 3626/2023**

### **a. General comments**

36. On 27<sup>th</sup> July 2023, besides the Provisional Measure, the Federal Government also submitted to Congress Bill of Law No. 3626/2023 (the “BL”) to amend the legislation governing fixed odds sports betting and commercial promotions. The BL intends to modify Provisional Measure No. 2158-35/2001, Law No. 5768/1971 and the Law.

37. In relation to fixed odds sports betting, the BL provides for the annual monetary adjustment of the monthly Inspection Fee, by act of the Minister of Finance, which may not exceed the variation of the official inflation index.

38. The BL also covers anti-money laundering policy, which establishes that the exploitation of fixed odds sports betting is conditioned to the adoption and implementation of policies, procedures and internal controls aimed at preventing money laundering, terrorist financing and the proliferation of weapons of mass destruction. The regulations relative to the fulfilment of these obligations will be issued by the Ministry of Finance taking into account the legislation on money laundering and terrorism. The BL also deals with combating sports bets fraud and establishes fines for wrongdoings.

39. The BL establishes that the Ministry of Finance may apply precautionary measures, on a provisional basis, in cases of suspected match fixing or other suspicions of fraud and provisionally determine the immediate suspension of bets and the withholding of winnings payments, in the event of fraud.

40. Further, although the Federal Government had promised that the BL would create a Secretariat of Prizes and Lotteries, the text of the BL makes no mention of such initiative.

**b. Timing and processing at Congress**

41. The BL is classified as an urgent procedure, Therefore, the next to be taken at Congress steps are as follows:

- a) BL submitted by Federal Government to Congress: 25<sup>th</sup> July 2023;
- b) Deadline for BL to be voted by the House of Representatives (*Câmara dos Deputados*): 8<sup>th</sup> September 2023;
- c) Extension: Not applicable;
- d) Consequences: In case the BL is not voted on, it will remain as a bill of law indefinitely.

We hope the above is of assistance and remain at your disposal should you have any queries or require any additional information and support.

With kind regards,

**MONTGOMERY & ASSOCIADOS**