

ORDER EHA/3084/2011, OF 8 NOVEMBER WHICH APPROVES THE BASIC REGULATIONS FOR CONTESTS.

The development, evolution and diversity of leisure activities is something that can be seen in all modern societies today, and is an area of growing economic importance. For this reason, the administration needs to pay specific attention to these activities and ensure they are regulated in accordance with their scale and social and economic impact.

Furthermore, the progressive spread of new communication technologies to all social areas is having an unquestionable impact on the leisure industry, where a sizeable group of users demonstrate a preference for practising leisure activities via remote connections.

This combination of economic, technological and social circumstances mean that the more traditional modes of gaming have been joined by others.

The approval of Law 13/2011, of 27 May on the regulation of gaming, has established a regulatory framework for access to the operation and development of gaming activities at a national level.

This access is materialised through permits that authorise gaming operators to operate the modes of gaming covered by the Law through general licences, on the one hand, and, on the other, to operate each individual type of game regulated by the Law through specific licences.

This Order ensures compliance with the requirements for prior regulation, which, for the awarding of specific licences, is established in article 11 of Law 13/2011, of 27 May on the regulation of gaming, approving the Basic Regulations governing contests.

This new regulation establishes a series of basic regulations that can be implemented by the National Gaming Commission and which will be complemented by the specific private rules that the different operators will have to draw up and propose together with their application for a specific licence and which will govern the gaming operations and the operator's relations with participants.

Therefore, they form the basis of a regulatory framework aimed principally at protecting participants and public interests affected by gaming activities, particularly the protection of minors and dependent people, the prevention of gambling addiction and compliance with the provisions of Law 10/2010, of 28 April on the prevention of money laundering and terrorist financing.

Article 5 of Law 13/2011, of 27 May on the regulation of gaming, grants the

Ministry of Economy and Finance the power to establish, by means of a Ministerial Order, the basic regulations governing each game.

By virtue of which, I hereby decree:

Article 1. Approval of the Basic Regulations for contests.

Approval is given for the Basic Regulations for contests, which are national in scope, and which are included as Appendix I of this Order. The terms established in this Order shall be understood without prejudice to the powers of the Autonomous Regions in relation to the planning and regulation of games and bets wagered in person in public establishments dedicated to recreational activities.

Article 2. Limits on the guarantees associated with the specific licence for operating contests.

Approval is given to the limits corresponding to the guarantees associated with the specific licence for operating contests which are included in the Order as Appendix II.

Article 3. Financial limits on participating in and operating contests.

Approval is given to the financial limits on participating in and operating contests, included in this Order as Appendix III.

Final provision one. Authorisation of the National Gaming Commission.

1. The National Gaming Commission is authorised to establish any provisions deemed necessary to implement and apply this Order and, in particular, to modify the sums established in Appendix III accompanying the Order.
2. The National Gaming Commission is authorised to adopt as many provisions as are necessary to implement and execute the terms established in the basic regulations for contests.
3. The National Gaming Commission is authorised to establish the procedure that regulates the awarding of specific licences and permits for occasional contests, as provided for in this Ministerial Order and the implementing regulations of Law 13/2011, of 27 May on the regulation of gaming. This procedure establishes the requirements to be met by operators and the documentation they need to present.

Final provision two. Entry into force.

This Resolution will enter into force the day after its publication in the Official State Gazette.

Madrid, 8 November 2011.

THE VICE PRESIDENT OF THE GOVERNMENT FOR ECONOMIC AFFAIRS
AND MINISTER OF ECONOMY AND FINANCE

Elena Salgado Méndez

APPENDIX I

Basic regulations for contests.

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Chapter I.

General provisions

Article 1. Aim and scope of application.

The aim of this Regulation is to establish the basic rules that operators have to comply with in order to develop and operate contests - at a national level - and in drafting and producing their own specific rules, notwithstanding the powers corresponding to the Autonomous Regions regarding planning and regulating games and bets wagered in person in public establishments dedicated to recreational activities.

Article 2. Definitions.

For the purposes of these basic regulations, the terms used herein will have the meaning established in this article.

1. *Contests.* Contests are understood to be the type of game in which the offering, development and outcome are offered via a communication medium, whether television, radio, internet or another method, provided that the gaming activity is connected to or is subordinate to the main activity. In order to have the right to obtain a prize, either in cash or in kind, participation in this type of game is carried out either directly, by means of a financial outlay, or through telephone calls, the sending of text messages or any other electronic, computerised or online procedure for which there is an additional tariff system. It does not matter if prizes are awarded only on the basis of chance or if they are also based on successfully completing contest, knowledge or skills tasks.

The above definition includes both the audio-visual communication programmes whose main content is based on developing gaming activities in which participation in said activities is carried out for a charge via telephone calls, sending text messages or any other electronic, computerised or online procedure, for which there is an additional tariff system, and incidental gaming activities included in audio-visual communication programmes other than those described above.

This definition of contests excludes programmes in which, even though there is a prize, the contest entrant does not make any kind of economic outlay in order to participate, either directly or by means of phone calls, text messages or any other electronic, computerised or online procedure for which there is an additional tariff system.

2. *Gaming operator.* A gaming operator is understood to be an individual or legal entity who, having obtained a licence which authorises them to develop and market contests, undertakes this activity assuming both its risks and benefits and, at the same time, meets the following conditions:

a) They adopt decisions on the marketing policy for the contest, among others, return or amount of prizes and promotional policy.

b) They manage the gaming platform and, where applicable, the registration of users and gaming accounts.

3. *Media operator.* A media operator is understood to be an individual or legal entity who, having effective control over the corresponding media and, where applicable, the selection of content and its organisation on the corresponding medium, provides support to gaming operators to develop and operate contests. The media operator will be considered to be a gaming operator when they meet the requirements listed above.

4. *Main activity.* Main activity is understood to mean the ordinary activity of a communication medium which is different and clearly distinguishable from gaming activity.

5. *Suspended contest.* A contest is understood to be suspended when, having started, it has been interrupted before reaching its scheduled conclusion. Suspended contests may offer valid results if this is established in its specific rules.

6. *Cancelled contest.* A contest is understood to be cancelled when, for reasons not attributable to the gaming operator or participants, it does not take place or is held and its results can not be considered to complete the game.

7. *Postponed contest.* A contest is understood to be postponed when, for reasons not attributable to the gaming operator or the participants, it does not take place at the time it is scheduled to do so. Unless the specific rules of the game state otherwise, a postponed contest means postponing the results until the time the contest is held.

Chapter II.

Authorising permits

Article 3. Authorisations required.

Operators who are interested in developing and operating contests must have a general licence for contests, defined in article 3, letter e) of Law 13/2011, of 27 May on the regulation of gaming, awarded by the National Gaming Commission and must request and obtain the corresponding specific licence for the type of contest they wish to develop.

Notwithstanding the fact that they are connected to or subordinate to the content of the communication medium that supports them, general and specific licences for marketing contests do not permit the licence holder to develop

gaming activities subject to other types of licences, whereby obtaining the corresponding general and specific licences in each case is an indispensable condition for undertaking said activities.

Article 4. Validity and extending specific licenses.

1. The specific licence for developing and operating contests will be valid for five years and the interested party may apply to extend the licence for successive periods of the same duration until the general licence by which it is covered expires.

2. The application to extend the specific licence should be sent to the National Gaming Commission in the year before the expiration date of the licence and at least four months before it expires. Said application must show evidence of:

a) Compliance with the requirements and conditions for obtaining said specific license.

b) The uninterrupted use of the license for at least three fifths of the validity period of the specific license.

c) Payment of the tax on gaming activities and the fees for the administrative management of the game.

For the purpose of paying and settling the rate for the administrative management of the game, established in article 49.5.d) of Law 13/2011, of 27 May on the regulation of gaming, the extension of a specific licence shall be equivalent to awarding a new licence.

3. In compliance with the conditions referred to above, the National Gaming Commission will award the requested extension and will agree to its entry in the General Register of Gaming Licenses unless it believes there are reasons relating to safeguarding public interests, protecting minors or preventing cases of gaming addiction that justify its refusal to award the requested extension.

Article 5. Guarantees associated with the specific license.

1. The National Gaming Commission may establish the general obligation to produce an additional guarantee associated with the specific licence for developing and operating contests.

The National Gaming Commission may, where applicable, pass a resolution to set the sum of the guarantee associated with the specific licence for developing and operating contests, which all operators will have to provide, in accordance with the terms set out in Appendix II of Order EHA XXX/2011, of xxxx of

xxxxxxx, which approves the basic regulations for contests.

2. The guarantee associated with the specific licence for developing and operating contests is subject to compliance with the general obligations of the operator and, in particular, the specific obligations relating to the payment of prizes for the contests held by the operator, and is likewise subject to compliance with any other obligation that, in relation to the specific licence in question, has been imposed by the National Gaming Commission, respecting the terms set forth in article 77 of Law 58/2003, of 17 December, the General Law on Taxation, within the framework of article 14 of Law 13/2011, of 27 May on the regulation of gaming, and its implementing regulations.

3. The additional guarantees referred to in this article will be constituted in the form and under the conditions established in the implementing regulations of Law 13/2011, of 27 May on the regulation of gaming.

Chapter III.

Relations between the operator and the participants.

Article 6. Specific rules of contests.

1. The development and operation of contests will be governed by these basic regulations, by the provisions that, in the implementation of said regulations, are passed by the National Gaming Commission, by the terms of the specific licence awarded and by the specific rules of each game, produced and published by the operator.

2. In order to develop and operate contests, the specific rules must be drawn up and published. These are private in nature and should be produced by the gaming operator, notwithstanding the supervisory powers of the National Gaming Commission.

The specific rules will set the rules of the contest, the maximum number of entries allowed by the operator, the theoretical likelihood of obtaining a prize based on the number of participants, the prize amount and, where applicable, the contest prize categories and the principles governing the relationship between the operator and the participants.

3. The specific rules of contests must be published by the operator on their website and, using the techniques required by the medium used, they must be easily accessible to participants on a permanent basis and free of charge and in a downloadable format.

The media operator that supports that gaming operator to undertake the contest must make the public aware of the specific rules of the contest and, where applicable, provide details of the website, either their own or that of the gaming operator, where the specific rules are published.

4. The gaming operator should notify the National Gaming Commission of the specific rules of contests at least seven days before the contests are marketed, and of the date of their publication. Furthermore, any changes to the specific rules published will have to be communicated to the National Gaming Commission at least seven days before the contest is marketed.

Article 7. Participant claims.

1. The operator must offer a customer service and must have a system for dealing with and resolving any possible complaints or claims made by participants or any other person who may be affected by the actions of the operator, and within the specific rules of the game, should establish the procedures and means to enable participants to present claims and, in particular, the address or addresses to which said claims should be sent, the time period for presenting claims and the time period in which the operator must respond.

The customer service and complaints and claims system should be easily accessible to potential interested parties and must, at least, provide electronic access via the operator's website or telephone access via the operators customer services department, which will record the date and time of receipt of any claims presented via these means.

The customer service must be offered at least in Spanish.

2. The deadline for presenting claims will be established in the specific rules of the game, and should be no less than three months from the date of the event on which the corresponding contest will be held.

The operator should issue a communication to the claimant in which they must acknowledge receipt of the claim, and which should feature the identity of the operator and the time period in which the claimant will be informed of the decision reached regarding their claim.

The operator will reach a decision on the participant's claim within a period of one month from the date the claim is received at the address or addresses established for this purpose, and this will be communicated to the claimant.

3. If the claim has been resolved by the operator and the claimant has not been informed of the decision within the one-month period since the claim was

received, the participant can send a claim to the National Gaming Commission, which will resolve the situation within two months from the date the claim is entered in their register, notwithstanding the opening of the corresponding sanction procedure if the operator has committed any of the infractions listed in Chapter VI of Law 13/2011, of 27 May on the regulation of gaming.

4. The expiration date of the prizes will be put on hold from the date the claim is received by the operator until the date on which the operator communicates their decision to the claimant or, where applicable, until notification is given of the decision reached by the National Gaming Commission.

Article 8. Obligations with regard to sharing information with participants

1. Gaming operators and, where applicable, the media operators that support them, must provide participants with complete and updated information - at least in Spanish - on the following aspects:

a) Information on the gaming operator and, in particular, the licenses awarded by the National Gambling Commission and the validity of these, the trade name, business name, registered address and, where applicable, address of the Spanish representative. This information should be presented in a way that ensures the participant is unable to mistake the identity of the gaming operator, particularly if the operator is the communication medium that provides the support service.

b) Information on the claims assistance system implemented by the gaming operator referred to in the above article. The information must contain at least: postal and email address to which the claims can be sent, deadlines for presenting claims and, where applicable, standard forms and time period for communicating the decision. They must also provide information on the operator's duty to issue a reply for each claim received.

c) Information on the specific rules of the games offered and on the means of participating in said games, which the operator makes available to the participants. This information must be truthful and easily available before participation begins and at any time during participation.

d) Information on the total amount to be paid by participants in order to take part in the contest, the percentage of the revenue that will be allocated to prize funds, the amount and value of any prizes the participant could win, the maximum number of entries and the theoretical probability of obtaining the prize or prizes based on the number of participants. In cases where participants take part through a gaming account, the gaming operator must inform the participant of the amount they have spent on participating in the contest and their account

balance.

2. The information on the cost of entering the contest should be given on the invitation to participate and, when the medium supporting the contest is television, for the whole time that the contest is promoted or advertised, this must be presented, at least in static form using characters that are easy to view or perceive. In adverts broadcast on the radio or television, wherever the channel or number for participating in the contest is communicated orally, the total cost of entering the contest must be given orally.

In all cases, when visual means are used, the characters providing details of the contest entry fee should be no smaller than the characters used to publicise the participation channel or, where applicable, payment of said fee.

3. Information on the game, its name and the way it is presented should be offered in such a way so as to prevent any resemblance or confusion with any other games, and to ensure the participant is not confused about the nature of the game.

The information given to participants by the operator must at least be provided in Spanish.

Article 9. Promoting games

1. Under the terms established in article 7 of Law 13/2011 on the regulation of gaming, a gaming operator may advertise, sponsor or promote gaming activities and advertise or promote himself, in accordance with the following criteria:

a) The advertising should be easily identifiable by the target audience.

b) The advertising should be socially responsible, paying due attention to the protection of minors and other particularly vulnerable groups. Also, in the case of minors, they must avoid directing advertising at them or creating advertising which is particularly appealing to children and young people under the age of 18 and must ensure said people do not play a significant role in the promotional activity itself.

c) If the advertising is broadcast via audio-visual means, they must also respect the provisions that apply to commercial and self-promotional communications contained in Law 7/2010, of 31 March, the General Law on Audio-visual Communication, and in particular the provisions of article 7 on the rights of minors. Equally, they must pay special attention to the times that the gaming advertising is broadcast and must take into account the age ratings of the programmes the adverts are broadcast alongside or are inserted into.

2. Furthermore, the operator may undertake promotional activities to promote

the range of games they market and to offer bonuses for players to sign up or participate, provided said practices:

- a) Are not contrary to the provisions of these basic regulations or the regulations governing the game.
- b) Do not contravene the terms established in Law 34/2002, of 11 July, on Information Society Services and E-commerce and Law 7/2010, of 31 March, the General Law on Audio-visual Communication.
- c) Do not alter the dynamics of the game.
- d) Do not lead to confusion among participants regarding the nature of the game.

3. The operator is responsible for publishing on their platform the conditions of application and validity periods of all promotional initiatives they offer and the terms and conditions of said initiatives.

4. The National Gambling Commission can set a maximum limit on the amount an operator may spend on promotional initiatives and bonuses for participants under the terms established in article 7 of Law 13/2011, of 27 May on the regulation of gaming, and in the regulations that govern the implementation of said article.

Article 10. Participation channels and methods.

1. Participation in contests, as provided for in article 1 of Law 13/2011, of 27 May on the regulation of gaming, and regardless of the media used to hold the contest, may be carried out via electronic, online and interactive channels, wherein any potential in-person methods are incidental in nature.

2. Individuals may participate in contests using any mechanism, installation, equipment or system that is able to produce, store or transmit documents, data and information, including any open or restricted communication networks such as television, internet, landlines and mobile telephony or any others, or interactive communication, either in real time or with time delay.

3. Taking into account the special conditions of the medium used to run contests, based on the criteria of proportionality and at the request of the gaming operator, the National Gaming Commission may authorise, through the corresponding specific licences, participation in contests without the prior identification of participants through a user registration system.

In all cases, identifying participants and checking that they are not subject to the individual bans referred to in letters a), b) and c) of point two of article 6 of Law

13/2011, of 27 May on the regulation of gaming, will be an essential condition for receiving any prizes obtained, regardless of their value and nature.

4. Participation through electronic communication services with an additional tariff system should be carried out using the number systems established by the Ministry of Industry, Tourism and Trade. The National Gaming Commission and the corresponding body from the Ministry of Industry, Tourism and Trade may establish the use of a specific number for holding contests.

Chapter IV.

Operating contests.

Article 11. Aim of contests.

In a contest, a prize in cash or in kind is awarded to contestants who, according to the rules of the contest, win either by chance or after completing a number of contest, knowledge or skill-related tasks involving some form of chance at a given point of the activity.

Article 12. Participating in contests.

1. Participants may take part in contests via the means established by the operator in their specific rules for the game, from among those listed in point no. 2 of article 10 of these Basic Regulations.

2. The fee for participating in contests will be set by the operator in the specific rules of the game and will be paid by the participant using the payment methods offered by the operator, either directly by means of a financial outlay, or through telephone calls, text messages or any other electronic, computerised or online procedure for which there is an additional tariff system.

The participation price stated in the corresponding specific rules will be the total amount that the participant has to pay, regardless of the amount or percentage which goes towards paying for the any support services that may be used. This amount should be expressed in euros.

The gaming operator and the media operator that supports the running of the contest must inform the public of the total cost of participating in accordance with the conditions referred to in number 2 of article 8 of these Basic Regulations.

The maximum fee for participating in a contest shall be the amount referred to

in point one of Appendix III of Order EHA /2011, of of , which approves the Basic Regulations for contests.

3. Within the specific rules of the game, the operators should establish the terms that apply in the event that the contests are suspended, cancelled or postponed. They should also establish the occasions on which the amounts played may be maintained or cancelled as a result of suspensions or postponements.

4. The full sum corresponding to participation in a contest which, once formalised, is cancelled by the operator in application of the specific rules should be refunded or made available to participants in the form established in said specific rules, always at no additional cost to the participants and with no additional obligations.

5. The National Gaming Commission shall establish obligations whereby operators are required to establish mechanisms that limit the number of times an individual can enter a contest or when they have reason to believe that the revenue collected is disproportionate to the value of the prize offered, that limit the total number of participants.

Article 13. Implementation, determining and awarding prizes.

1. The contest should be held in accordance with the terms of these Basic Regulations, any provisions passed by the National Gaming Commission and the specific rules of the game.

2. Prizes should be determined in accordance with the specific rules of the game. In any case, the amount or, where applicable, maximum value of the prizes that can be won in a contest should be the sum referred to in point two of Appendix III of Order EHA /2011, of of , which approves the basic regulations for contests.

Article 14. Paying prizes.

1. Prize winners are participants who have officially entered the contest and, in accordance with the specific rules of the contest, are deemed the winners.

2. The operator is obliged to pay out any prizes obtained in the game from the moment the contest is completed and should pay the prizes to the winning participants in accordance with the terms and conditions set in the specific rules of the game.

3. The operator will pay the prizes as provided for in the specific rules of the

game and, in their absence, and wherever possible, by the same payment means used by the participant to participate. Under no circumstances should payment of the prize entail any costs or additional obligations for the prize winning participant. Furthermore, the specific rules of the contest must give details of the person liable for payment of any costs or taxes resulting from the awarding of the prize.

The right to receive payment of the prize will expire on the date set in the specific rules of the game and should not be less than three months from the day after the conclusion of the contest that gave rise to the prizes.

4. The National Gaming Commission will establish any additional procedures and obligations deemed necessary in relation to the payment of prizes in order to better protect participants' and public interests.

Translated

APPENDIX II

Limits on the guarantees associated with the specific licence for operating contests.

One.

By means of a resolution, the National Gaming Commission will establish the sum of the guarantee associated with the specific licences for developing and operating contests and which will be set at between two and seven percent of the gross taxable income of the operators for the activity subject to the specific licence in the year immediately preceding the current one. For this purpose, the gross income of the operator will be understood in accordance with the terms set out in article 48.6 of Law 13/2011, of 27 May on the regulation of gaming. During the initial period of specific licences, payment of a guarantee is not required. The initial period of the specific licences is calculated in accordance with the applicable terms of the implementing regulations governing Law 13/2011, of 27 May on the regulation of gaming.

APPENDIX III

Financial limits on participating in and operating contests.

One. Maximum cost of participating in a contest.

The maximum cost for participating in a contest will be six euros.

Two. Maximum value and sum of any prizes that may be obtained in a contest.

The maximum value of the prizes that may be obtained by the group of individuals participating in a contest will be one million euros. With regard to cash prizes, the maximum amount will be one million euros.