

August 2020

## UKRAINE: NEW GAMBLING LEGISLATION NOW IN EFFECT

After a 10-year statutory ban on gambling, Ukraine has made a move towards the creation of a regulated gambling market. Even though the topic remains highly debated in Ukrainian society, it is expected that legalization of gambling should facilitate bringing numerous illegal business operators out of the shadows and attract foreign providers.

On 11 August 2020, the Law "On State Regulation of Organizing and Running Gambling" (registration no. 2285-д) (the "Gambling Law") was signed into law by the President of Ukraine. The new legislation became effective on 13 August 2020, except for certain provisions (such as e.g. related to the State Online Monitoring System).

The Gambling Law is a comprehensive piece of legislation which sets forth the general framework for gambling regulation, including:

- an exhaustive list of permitted gambling activities and types of gambling licenses, the regulation of such activities and licensing procedure;
- requirements for gambling providers;
- procedures for the creation of and powers and authorities of a special regulator – the Commission for the Regulation of Gaming and Lotteries (the "Commission");
- gambling market control measures and procedures including the creation of the State Online Monitoring System, a software and hardware complex designed to monitor activities of gambling providers, to receive/transmit information in real time from/to gaming equipment, the collection and processing of information on accepted bets, paid winnings etc.;
- measures for the prevention of gambling addiction;
- requirements for game-play rules and game running;
- requirements for gaming equipment (including its certification), premises and online platforms;
- liabilities for non-compliance.

## GAMES OF CHANCE AND GAMBLERS

Now, a game of chance is defined as any game in which a condition of participation is the gambler's bet enabling the gambler to receive a winning (prize), the probability of

receiving and the amount of which, fully or partially, depend on chance as well as the gambler's knowledge and skills.

The game will not constitute a game of chance if it lacks at least one of the following features: (i) a bet; (ii) possibility of winning or not winning a prize; and (iii) probability of winning a prize and its size depending (wholly or partially) on chance.

Also, there is a list of games/activities which are not considered as games of chance among which are creative and sports competitions, games without winning a prize, lotteries and sports poker.

With respect to the gambler, it can only be a person, who has reached 21 years of age at the time of gambling, has full legal capacity and is not included in the Register of persons with limited access to gambling establishments and/or gambling. A person can be included in this register by applying for oneself, by the Commission or based on a court decision under the grounds set forth in the Gambling Law.

## GAMBLING ACTIVITIES AND LICENSES

Only the following types of gambling activities are permitted in Ukraine under the Gambling Law:

- (i) gaming in a land-based casino - which may be conducted within special gaming zones of a 5-star casino, country recreation complexes (both subject to the number of rooms and floorspace requirements) or a special gaming zone established by the Cabinet of Ministers of Ukraine;
- (ii) gaming in online casinos;
- (iii) betting (online and in land-based betting shops) – land-based betting may be conducted within special gaming zones of 3-star to 5-star casinos (subject to the number of rooms and floorspace requirements) and racetracks;
- (iv) slot machines (in slot machine halls) - which may be conducted within special gaming zones of 3-star to 5-star casinos (subject to the number of rooms and floorspace requirements); and
- (v) online poker.

The licensing authority is the Commission, and licenses are to be issued for a 5-year term. Only Ukrainian legal entities may act as gambling providers and conduct the mentioned gambling activities in Ukraine provided that they have obtained the required license(s) and use certified equipment and online gambling platforms. The Gambling Law requires the gaming equipment and platforms to be connected to the State On-line Monitoring System (these provisions will start applying not later than within 2 years after the enactment of the law).

Apart from licenses for the above listed gambling activities, and depending on the specific type of activities, the gambling provider will also be required to obtain license(s) for: (i) each gaming table and/or roulette table, (ii) each betting shop, (iii) each slot machine, and (v) betting at the racetrack. These licenses will be issued for the same licensing term as the main gambling license.

The Gambling Law also provides for the issuance of the following separate types of licenses:

- (i) license for gambling related services – enabling Ukrainian residents to supply software directly used in gambling activities (such as e.g. the software which is a part of the online platform) by Ukrainian gambling operators and non-Ukrainian providers licensed to conduct gambling activities in their respective jurisdictions; and
- (ii) investment license – issued for the implementation of land-based gaming investment projects based on the decision of the Cabinet of Ministers of Ukraine.

All licenses are subject to a licensing fee or an annual fee (except for the investment license) the amounts of which are indicated in the Gambling Law.

## CERTAIN SPECIFICS OF ONLINE GAMBLING

All internet-based gambling is permitted to be carried out only through websites within .UA domain zone or through mobile applications. The website used by the gambling provider must be specified in the licensing application and then reflected in the publicly accessible register.

The online gambling provider must conduct licensed activities under its brand name through an online platform (which is basically a set of hardware, software and technical facilities (equipment)). There are a number of requirements to the online platform used by any gambling provider, including that its technical facilities (equipment) must be located in Ukraine. It is required that the processing of information stored on the online platform must be also conducted in Ukraine.

The online gambling provider may accept bets from gamblers physically present in Ukraine or abroad and who are not included in the mentioned Register of persons with limited access to gambling establishments and/or gambling.

Importantly, the Gambling Law provides restrictive measures for those conducting online gambling in a manner which is not compliant with the new regulatory requirements. Specifically, a person arranging, running or giving access to gambling activities through a website may be required at the Commission's demand to limit such access within/from the territory of Ukraine within three business days. The hosting (information storage) services provider hosting the relevant website on its technical facilities will be also required to limit access to it within/from Ukraine if requested by the Commission. The Gambling Law does not clarify how these provisions would apply in a cross-border context. The relevant procedures for making such demands are to be regulated in the Commission's bylaws.

To restrict the operation by non-compliant online gambling providers (e.g. operating in Ukraine without the required license), the Gambling Law also requires banks and payment systems operating in Ukraine to refuse making payments to persons organizing or running gambling in Ukraine or giving access thereto.

## FURTHER STEPS

The full implementation of the new gambling regulatory regime requires the completion of a number of steps such as (i) creation of the Commission, which must be done within two months after the Gambling Law takes effect, (ii) adoption of the new regulatory documents and update of the existing regulatory documents – within three months, (iii) creation and commissioning of the State Online Monitoring System – within two years.

It should be noted that the Gambling Law does not introduce any amendments to the effective tax rules. Such amendments are expected after the implementation of the State Online Monitoring System following which the Cabinet of Ministers of Ukraine is required to submit a draft law on amendments to the Tax Code of Ukraine to the Parliament of Ukraine with respect to income tax rates applicable to gambling providers.

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