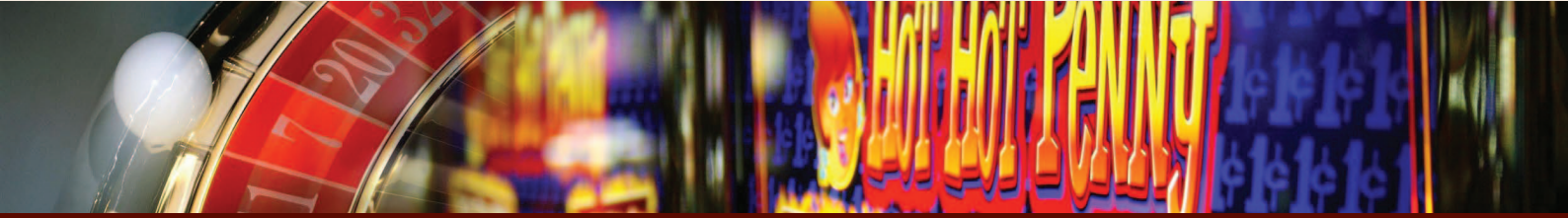


December 2010



NEW LEGISLATIVE INITIATIVE TO REGULATE GAMBLING BUSINESS IN UKRAINE: DRAFT LAW ON GAMBLING GAMES

Vasil Kisil & Partners offers this Legal Alert to keep our clients and other interested persons updated on the latest developments in Ukrainian legislation in the sphere of gambling.

More than a year has passed since the gambling business and participation in gambling games was prohibited in Ukraine by the *Law On Prohibition of Gambling Business* in Ukraine (the “*Gambling Ban Law*”) that entered into force on 25 June 2009. Pursuant to the *Gambling Ban Law* within 3 months (as of its effective date) the Cabinet of Ministers of Ukraine shall draft and file with the Verkhovna Rada of Ukraine (Parliament) for its consideration the *Draft Law On Gambling Organization and Maintenance of Gambling Activities in the Special Gambling Zones*. However, the particular terms and responsibilities for adoption of the said draft bill were not provided under the *Gambling Ban Law* and thus, the period of a total ban for gambling activities is indefinite as well as the time required for establishing new legislative framework for gambling regulation in Ukraine.

Since adoption of the *Gambling Ban Law* a number of comprehensive draft laws on gambling have been developed by the State Committee of Ukraine for Regulatory Policy and Entrepreneurship in September-November 2009. But the political situation in Ukraine and forthcoming presidential election 2010 introduced the “amendments” to the process of new legislative shaping in the sphere of gambling regulation and moved this issue from the agenda up to autumn 2010.

NEW DRAFT GAMBLING LAW

After the presidential elections of 2010 the new team that formed the Government promised to revise the former draft gambling laws and present its vision of state policy in respect of gambling regulation in Ukraine.

On 3 November 2010 the Ministry of Finance of Ukraine (the “*Ministry of Finance*”) finally made public the *Draft Law of Ukraine On Gambling Games* (the “*Draft Gambling Law*”). The Draft Gambling Law introduces completely new legal

framework for gambling in Ukraine, especially as compared to the drafts developed by State Committee of Ukraine for Regulatory Policy and Entrepreneurship.

This newsletter will give a quick insight into the key provisions of the Draft Gambling Law .

State Monopoly on Gambling

The Draft Gambling Law provides for the state monopoly on gambling games in Ukraine through the National Gambling Operator, a wholly state-owned enterprise which carries out its activities related to organizing and conducting gambling games. Thus, private gambling operators may be engaged in business activities related to conducting gambling games organized by the National Gambling Organizer only on the basis of a license and an agreement concluded with the National Gambling Organizer.

Special Gaming Zones

Under the Draft Gambling Law gambling games, except for state cash lotteries, are allowed only in casinos located in special gaming zones subject to the requirements of land and town-planning legislation. The said special gaming zones include the following:

- i. the Autonomous Republic of Crimea (excluding Sevastopol) and the territories of the following resorts: Bukovel, Truskavets, Morshyn, Mukacheve and Slavske;
- ii. inside four- or more star hotels with at least 100 rooms;
- iii. inside cultural and entertainment complexes in which casinos with gaming hall(s) with at least 500 sq. m. of space can be located;
- iv. inside nonresidential premises in which casinos with gaming hall(s) with at least 500 sq. m. of space can be located; and
- v. inside ships registered in Ukraine in which casinos with gaming hall(s) with at least 500 sq. m of space can be located.

However, the state cash lotteries are allowed throughout the whole territory of Ukraine subject to specific restrictions provided by the Draft Gambling Law.

Prohibitions and Restrictions

While allowing only state cash lotteries, card games, dice games, and roulette games the Draft Gambling Law directly prohibits the following gambling activities in Ukraine:

- i. bookmaking;
- ii. gambling games in electronic (virtual) casinos;
- iii. slot machine games;
- iv. interactive games and other TV and radio games requiring any participation fee to be paid by an individual (including as a telephone charge).

The ban on above listed types of gambling activities may be lifted only by amending the Draft Gambling Law with respective sections regulating the relevant types of activities.

Licensing

Business activities related to gambling shall be subject to licensing in accordance with the Law of Ukraine “*On Licensing of Certain Types of Business Activities*”. Under the Draft Gambling Law only legal entities (registered under the laws of Ukraine) are eligible for obtaining a license for organization and conducting of gambling games.

The Draft Gambling Law establishes the following types of licenses and respective license fees:

- i. organizing and conducting gambling games - UAH 1,000;
- ii. conducting state video lotteries - UAH 40,000,000;
- iii. conducting state bingos - UAH 40,000,000;
- iv. conducting state tolos - UAH 40,000,000;
- v. conducting state numerical lotteries - UAH 40,000,000;
- vi. conducting state discharging lotteries - UAH 40,000,000;
- vii. conducting state instant lotteries - UAH 40,000,000;
- viii. conducting casino gambling games - UAH 40,000,000.

The National Gambling Organizer is granted a license for an indefinite period of time, while the license to conduct a state lottery and casino gambling games may be issued to gambling operators for seven years. The license fee must be paid by the gambling operator in equal quarterly installments during the term

of the license. However, the first and last quarterly installments of the license fee are due immediately after the licensing authority's notification on the issuance of the license.

Requirements to Gambling Organizers and Operators

The Draft Gambling Law sets forth among others the following requirements to gambling organizers and operators:

- i. The share capital of a casino gambling operator may not be less than the sum of the license fee and the value of the gaming equipment that is used for gambling;
- ii. The share capital of a lottery operator, except for the National Gambling Organizer, may not be less than required by the National Bank of Ukraine for banks carrying out their activities throughout the whole territory of Ukraine;
- iii. During the term of the license, the gambling operator's equity capital may not be less than UAH 10,000,000 as of each last day of the report period.
- iv. The gaming equipment must be owned by the gambling operator;
- v. All accounting records in respect of gambling games shall be maintained separately from all other financial transactions performed by the gambling operator. If the gambling operator conducts more than one gambling game, separate analytical records shall be kept for each gambling game;
- vi. All the gaming equipment is subject to certification and mandatory proof test for reliability of registration in the unified electronic online control system of the operations related to the acceptance of bets, formation of the prize (gain) fund, jackpot, and payout of gains. The useful life of the gaming equipment may not exceed seven years from the manufacture date;
- vii. The advertisements of casino gambling games may be placed only in the location of casinos and in print media specializing on gambling, and on a personal web-site;
- viii. The advertisements of state cash lotteries may be placed only in lottery distribution locations, in print media specializing on gambling, on a personal web-site and on TV only when the draw of the state cash lotteries is conducted.

CONCLUSIONS

The Draft Gambling Law introduced by the Ministry of Finance is quite comprehensive in regulating both gambling games and lotteries, but it also contains a number of loopholes and inconsistencies.

The issue “number one” is a complete ban on bookmaking, electronic (virtual) casinos and slot machine that may last for an indefinite period of time. Moreover, the term bookmaking includes totalizators, which is known to be quite a different type of gambling. In addition, surprisingly it provides for different approach to the special gaming zones as compared to those previously announced by the state officials and provided in the draft gambling laws developed by the State Committee of Ukraine for Regulatory Policy and Entrepreneurship.

The Draft Gambling Law has just passed the stage of public discussions and all interested parties had a chance to submit their comments and suggestion thereon to the Ministry of Finance. Hopefully, the Ministry will consider and accept all constructive proposals submitted by the interested parties and make all necessary revisions and amendments to the Draft Gambling Law prior to submitting the final draft for approval of the Cabinet of Ministers of Ukraine and further submission for consideration and adoption by the Verkhovna Rada of Ukraine.



**Nataliya
Mykolska**

Senior associate
mykolska@vkp.kiev.ua



**Pavlo
Byelousov**

Associate
byelousov@vkp.kiev.ua

This alert is meant to be a general guide to recent developments in the law. Readers should not rely on the alert when considering specific action as it is not designed to provide legal or any other advice.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, including photocopying or recorded, without the written permission of the copyright holder.

If you do not wish to receive further information from Vasil Kisel & Partners legal developments, which we believe may be of interest to you, please, send an e-mail to nomorecontact@vkp.kiev.ua.

Leonardo Business Centre
17/52-A B. Khmel'nitskogo St.
Kyiv 01030 Ukraine
Telephone: +380 44 581 7777
Fax: +380 44 581 7770

www.kisilandpartners.com