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Practice Group(s):
Betting & Gaming

Amendments to the Polish Gambling Act

On June 30, 2011, the amendment of the Act on Gambling Games dated November 9, 2009 adopted on May 26, 2011 (“Amended Act”) came into force. The most important change implemented by the Amended Act is the introduction of online betting. This new regulation, as well as other amendments relating to various gambling games, is briefly characterized below.

1. Introduction of online betting

The Polish law definition of gambling games extends to games of chance, games on slot machines and betting. As a rule, organizing gambling through the Internet, as well as participating in it, is illegal in Poland. However, the Amended Act legalizes, under certain conditions, betting on the Internet.

As provided by the Amended Act, companies solely formed as limited liability (Polish “Sp. z o.o.”) or joint stock companies (Polish “S.A.”) and incorporated in Poland will be allowed to offer online betting subject to obtaining a six-year license granted by the Polish Minister of Finance.

The minimum share capital of the company that offers online betting cannot be lower than PLN 2.0 million (approx. 500,000 euro). Shares in such company can be purchased or subscribed for by persons (legal and natural) with their place of residence or registered office located in Poland or in a member state of the EU or EFTA only. The directors of such company must have Polish, EU or EFTA member state nationality.

According to the wording of the Amended Act, a company organizing online betting can utilize only an internet site with a Polish top level domain (*.pl).

The betting transactions effected online must be settled through a Polish bank, a Polish branch of a foreign bank or a credit institution conducting its activity through a branch or through trans-border activity.

Another restriction is the requirement that the equipment (servers) for processing and storing information and data regarding the bets and their participants must be installed and kept on the territory of a member state of the EU or EFTA.

Anyone organizing online betting is also obliged to archive in real time all data exchanged between such entity and the participants in the bets in an archive device located in Poland.

Further, a company organizing online betting is obliged to ensure the safety of the stored and transferred data as well as to store the data exchanged between such entity and the participants in the bets for a period of 5 years, starting from the end of the calendar year in which the data was recorded. Customs officers must be given access to the data stored in the archiving device as well as tools and software enabling review, processing and copying such data.

As in the case of other games of chance, only individuals over 18 years of age can participate in online betting.

Unlike in the case of regular betting, to avoid circumvention of law, companies licensed to organize online betting cannot entrust another person with the performance of actions in regard to the sale of proof of participation in a bet, accepting bets and paying out of winnings.

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Advertising and promotion of online betting is limited to advertising on the website used to organize those online bets.

Organizing, advertising and participating in online gambling which does not meet the prerequisites set forth in the Amended Act is illegal and subject not only to a fine but is also prosecuted as a crime under the Polish fiscal penal code.

Another restriction imposed on online betting enterprises is the high cost of entering the market. The fee for a license to organize online betting amounts to 2000% of the base amount for a license for organizing mutual betting and, in addition, 2000% of the base amount for a license to operate and 5000% of the base amount for each operated website (in comparison to 50% of the base amount for each regular bet reception point), where the base amount for a calendar year is equal to the average monthly remuneration in the corporate sector in the second quarter of the previous year (approximately 3,375.43 PLN (approx. 840 euro) for 2011).

Before receiving such a license, a company must also submit 480,000 PLN (approx. 120,000 euro) as a security deposit.

Moreover, any revenues accrued by the companies organizing such online betting will be further limited by a 12 percent turnover tax, which is obviously considered a very high tax rate for this kind of activity in comparison to the rest of Europe (if not the highest).

It is also worth noting that the provision of gambling game services online is also subject to the Polish Act on providing services by electronic means dated July 18, 2002 (Polish implementation of e-services Directive 2000/31/EC) if the gambling game is organized on Polish territory or the recipient participates in the gambling game on the territory of Poland or the service is directed to recipients on the territory of Poland, especially if it is available in the Polish language or advertised on the Polish territory.

2. Other novelties in the Amended Act

Another novelty introduced by the Amended Act is the registration of guests in game centers and the obligation to install audiovisual game control systems in casinos. According to the new regulation, all game centers (casinos and monetary bingo saloons) will be obliged to register the entrance of all guests, *i.e.*, their name, address, name and number of the document that certified their identity and age, PESEL number and citizenship. Casinos will also have to install an audiovisual game control systems which will control and record the progress and organization of the games in the casino.

Moreover, the amendment establishes a duty to register slot machines and gaming devices. The Amended Act also introduces a requirement that slot machines must be programmed in a way that the winnings will constitute at least 75% of the inserted (paid) fee.

According to the Amended Act, the customs office will be able to inspect the organization of gambling games and the connected financial transactions, as well as to prosecute entities who operate illegal games. The customs officers will be able to review the telecommunication data of the persons who organize and participate in illegal gambling; and if they suspect that a company or person committed a crime connected to the organization of illegal gambling games, they will be able to block their bank accounts without a court order for 72 hours.

One of the biggest problems faced by the industry at this time is the absence of implementing decrees, *i.e.*, secondary legislation of the Minister of Finance, which should provide the technical and practical details of the Amended Act. Until such legislation is passed, companies operating gambling games

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will not know how to effectively apply for a license to organize online betting or what standards are to be adhered to when implementing the registration of guest and audiovisual game control systems.

The Amended Act could also still face hurdles at the European Commission.

Authors:

Dominika Mizielińska

dominika.mizielinska@klgates.com

+48.22.653.4213

Katarzyna Wrzosek

katarzyna.wrzosek@klgates.com

+48.22.653.4275

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