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THE CEE LAW FIRM

NEW GAMBLING ACT IN SLOVAKIA

Even though the new Slovak Gambling Act modernizes gambling regulations in Slovakia, demonopolizing online gambling and opening the market up to foreign operators, it still keeps in place certain unreasonable barriers to entry to the market.

For some time now, the need for a newer, modernized approach to the regulation of gambling in Slovakia has been felt. There were several reasons for this. First, the restrictive approach to online gambling was considered outdated and raised doubts as to its compliance with EU law. Second, there was considerable effort on the part of various municipalities to restrict or even prevent gambling operations on their territories (mainly slot machines) and the existing regulation was perceived as not striking the right balance between those public interests and the legitimate business expectations of gambling operators. Third, the State intended to streamline the regulation and to create a dedicated authority to regulate the industry. Fourth, the provisions on responsible gambling were not perceived as being sufficient enough to protect vulnerable groups of players/bettors effectively.

These considerations resulted in the enactment of the new Gambling Act (**Act**; Act No. 30/2019 Coll.), which became effective on 1 March 2019, with the exception of certain provisions that became effective on 1 June 2019.

Until now, online casinos were monopolized by the state-owned operator Tipos; for the remaining types of gambling activities, the operator had to have a registered seat in Slovakia.

The act now allows any entity with a registered seat in a Member State of the EU or the European Economic Area to apply for gaming licences, with the exceptions of those licences that remain reserved for the state monopoly, i.e., a licence for a state lottery (number lotteries, special bingo games and lotteries with participants entering by submitting their VAT receipts). Slovak entities with foreign capital must have their shareholders domiciled in EEA or OECD member states. The licence holder must take the form of a joint stock company (with dematerialized registered shares – thus allowing the transparency of the shareholding structure), for certain games, a limited liability company with a supervisory board or of an analogous legal form under foreign law (in the case of foreign licence holders) is allowed as well. The minimum registered capital requirements depend on the type of the game to be operated by the licence holder and may reach up to €1,700,000 (e.g., for land-based casinos, online casinos, online betting, slot machines, video lottery terminals and similar devices in gaming halls and of internet games in online casinos); the source of the capital contributions must be disclosed to the Gambling Regulation Authority (**Authority**; in Slovak: *Úrad pre reguláciu hazardných hier*).

The licence fees may be a substantial obstacle for the entrance of certain operators onto the market since they seem to be of some of the highest amounts in the EU.

More specifically a fee of €2,000,000 is payable for a combination of the operation of slot machines, video lottery terminals and similar devices in gaming halls and of internet games in online casinos, a fee of €3,000,000 for a combination of the operation of a land-based casino and an online casino or for a self-standing licence for an online casino; the same amount is payable for a combination of land-based and online betting and for a self-standing online betting licence. A fee of €5,000,000 is payable

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for a combination of land-based and online casinos and betting, for a combination of an online casino and betting, for a combination of a land-based casino and an online casino and betting, and for a combination of an online casino and land-based and online betting.

In addition to these fees, the licence applicant must deposit financial collateral that should serve to secure fulfilment of the licence holder's obligations towards the Authority and the players/bettors. The amount of the collateral depends on the type of the game and may reach €1,500,000 (e.g., for the licence issued for both land-based and online betting).

The term of the licence ranges from two to ten years, depending on the type of the game (e.g., it is five years for land-based casinos and betting, five years (with an option for an additional five years) for a combined land-based and online betting licence and for a combined licence for land-based and online casinos, and ten years for self-standing online gambling or betting licences). The operator may exercise the option (by submitting an application that is essentially identical to the application for the new licence) to extend the licence period by delivering a request to the Authority within the time frame of 90 through to 60 days prior to the lapse of the existing licence. If the Authority does not deliver a negative decision within 30 days prior to the lapse of the licence, the licence is deemed to have been extended.

Moreover, the law – even though this intent was not explicitly admitted – protects the existing operators of online betting since the licences for such games will be issued with the effective date no sooner than on 1 July 2020 (even though operators may apply for a licence from 1 March 2019). Those companies which have been listed in the list of blacklisted online gambling operators within 12 months prior to filing a licence application may not apply for a licence.

It should be mentioned that despite this liberalization, there may still be certain concerns as to the compliance of the new regime with EU law.

The legislation requires that each foreign operator must establish a “foreign representative office” (in Slovak: *zahraničné zastúpenie*) in Slovakia that should serve as a go-between between the Authority and the licence holder. While it is questionable whether efficient communication with the licence holder cannot be achieved by a less onerous requirement, the requirement that a director of the representative office be a Slovak national does not seem to have any reasonable justification from the perspective of EU law. The issue of the incompatibility of this requirement has been raised by certain stakeholders.

Online bingo and lotteries are still monopolized by the state enterprise Tipos (the Ministry of Finance holds 100% of the company's shares). The explanatory notes do not provide any justification within the meaning of EU law as to the need to keep such restrictive measure; in particular, there is no suggestion that the purpose of such arrangement would be to reduce opportunities for gambling and to limit such activities in a consistent and systematic matter.

The Act requires that online gaming operators locate their servers in Slovakia and allows the Authority online access to such servers. The servers should keep data on all games already completed, more specifically, the number of those games, data on individual bets and wins, records on any modifications to those data and to the software and any errors. The server should also keep data on players'/bettors' accounts (including movements in those accounts) and all games completed by the holder of that account, in the abovementioned structure. The technical details of such requirements are specified by the Ministry of Finance in its implementing decree that allows the use of virtual servers by the

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operator. However, the duty to locate the server in Slovakia might still constitute issues from the viewpoint of EU law.

Certainly more covered by the mass media than the liberalization of online gaming were the attempts by some municipalities (including in the capital city, Bratislava) to restrict land-based casinos on their territories. The new Act contains several rights of municipalities to regulate gambling activities.

In general, gaming halls and casinos can be located only in hotels, motels or guest houses, buildings intended for commerce or services, for culture and entertainment and – only in the case of gaming halls – in apartment buildings (provided that more than half of all of the owners agree).

A municipality may prohibit gaming halls from being located within 200 metres from certain establishments (such as schools, establishments for social care services, and institutions for treating pathological gambling disorders) and may prohibit the operation of casinos and gaming halls for up to 12 days per year. Moreover – and this holds true for all municipalities – land-based gambling is prohibited from 3 a.m. through to 10 a.m.

Moreover – and this addresses the public concern with the proliferation of slot machines and of gaming halls (thus degrading public space) – municipalities may restrict or even prohibit the operation of gaming halls or casinos on their territories.

Following a petition of 30% of registered voters (in the largest cities in the country – Bratislava and Košice – the percentage can be lower but must be at least 15%), municipalities may prohibit casinos or gaming halls from being located in certain or all of the above mentioned types of buildings that may normally host such establishments, i.e., if all types of buildings are covered by a municipality's decision, the operation of casinos and gaming halls is effectively prohibited. Such ban does not cover operators with existing licences, however, the option to extend the licence term cannot be exercised in such case.

One of the aims of the new regulation was to centralize and streamline the regulation of the gambling industry. To that effect, from 1 June 2019, the newly established Authority manages the licensing process, the collection of revenue taxes, and the overall regulation of the industry.

Even though the establishment of a separate regulator certainly represents a step in the right direction, this regulator does not have the same level of independence from the public authorities promoting the industry (i.e., the Ministry of Finance) as regulators in certain other sectors of the economy (e.g., in the energy sector). Most importantly, the Authority does not have a budget separate from the budget of the Ministry of Finance (even though it is partly financed from the contributions of the operators) and its director is appointed and recalled by the Minister of Finance.

The Act takes over the regulation of the system excluding – upon registration with the dedicated register – certain individuals from gambling activities. Certain individuals (such as those receiving social benefits and scholarships, those diagnosed with pathological gambling disorders, those that fail to pay alimony or those that have their participation in gambling prohibited by the court) are registered by the Authority. Moreover, any individuals may request to be voluntarily registered, with deregistration possible only after six months from the original registration. The duty to prevent such excluded individuals from participating in gambling extends also to the operators of online gambling – individuals participating in online games must send a copy of their ID card and other official documents showing their identity to the operator. Moreover, the Act defines several pieces of information and

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warnings that must appear on the player's/bettor's screen once he or she decides to participate in online gaming.

Similarly to the previous regulation, the Act contains several measures to prevent unlicensed gambling. The Authority keeps a list of blacklisted websites and telephone numbers used by entities offering unlicensed gambling. The Authority may also request that the court impose a duty on telecommunication operators to prevent access to such websites or telephone numbers and that it prohibit the payment services provider from executing a payment in favour of a bank account utilized by the unlicensed gambling operator. The court must issue the order within seven days.

The Act contains principles and procedural rules applicable to the Authority's supervisory activities, such as rules on confidentiality, and site inspections. If the Authority identifies a breach of the law, it may impose the duty to remedy the defects, to submit special reports, discontinue unlicensed activities, discontinue the use of certain technical devices and impose penalties. The Act defines those penalties in certain ranges for each of the possible breaches of law, the amount of the penalty actually imposed depends on the nature, gravity, degree of fault, duration of the illegal conduct and its consequences. The Authority should also take into account the fact whether the sanctioned entity – before receiving sanction – identified the breach of the law by itself and remedied the breach. The most severe penalties are those for operating or participating in unlicensed gambling or for facilitating unlicensed gambling; these penalties may range from €20,000 to €500,000. If the sanctioned entity continues with the unlicensed gambling, the Authority may impose an additional penalty in an amount of up to €1,000,000.

The Authority may also impose on a person infringing the law, a person in a close relationship with the infringer or to a person controlled by the infringer, a duty to surrender the profits obtained as a result of the breach of the law.

The Act brings changes to the taxation of gambling, most importantly, for betting and casino games; the tax base is now revenues from the games and not the total amount of bets. By way of example, the tax rate is 22% from the total revenues generated by land-based and internet casinos and 22% of the revenues from betting (either online or land-based), however, the tax revenue must reach at least 11% of the total amount of wins paid out to the players/bettors in the relevant month. The tax is payable until the 25th day of the subsequent month. The Act also sets up the fees payable to the municipalities' budgets for slot machines, video lottery terminals and similar devices located on their territories.

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