

Gambling Ban in Ukraine: the Game is Up!



by Pavlo I. BYELOUSOV

Despite President Yushchenko's veto on 11 June 2009, the Verkhovna Rada of Ukraine (Parliament) voted unanimously in favour of adopting the *On Prohibition (Ban) of Gambling Business in Ukraine Act of Ukraine* (hereinafter – the *Gambling Ban Act*), which came into force on 25 June 2009.

Gambling Ban

Pursuant to Article 2 of the *Gambling Ban Act*, the gambling business and participation in gambling games are prohibited in Ukraine. The only activities which are exempted from the ban¹ are the following:

- (a) issue and drawing of lottery²;
- (b) organizing and drawing of creative and sporting competitions etc, regardless of whether or not money or

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a prize is provided under its terms and conditions;

(c) billiards, bowling and other games providing no prize (gain) for participants;

(d) two-coordinate machine games provided that players can win only material goods as a prize (e.g., toys, candies, etc.);

(e) draw games on a free basis which aim to advertise a particular product, service, trademark, etc.

(f) contests (quiz, panel games) providing special status for participants and money or a prize for a personal win.

(g) drawing games on a pay basis for entertainment, beneficial or gnostic purposes.

In case of violation of such ban those entrepreneurs/entities engaged in the gambling business on the territory of Ukraine will bear sufficient financial responsibility – a penalty of up to 8,000 minimum salaries³ accompanied by confiscation of gambling machines and profits to the State Budget.

Furthermore, under Article 4 (2) of the *Gambling Ban Act*, the issue of gambling licences in Ukraine has been terminated. At the same time, those gambling licenses issued prior to adoption of the *Gambling Ban Act* are cancelled and there is actually no legal mechanism for compensating such cancellation.

¹ Article 1 (2) of the *Gambling Ban Act*.

² Note that the lottery market is currently closed to newcomers as in 2005 the moratorium on business activities relating to issuing and drawing state lotteries was imposed by the Ukrainian Parliament.

³ Approximately USD 655,000,00.

The *Gambling Ban Act* also provides that within 3 months of the effective date the Cabinet of Ministers of Ukraine (Government) shall draft and file with the Verkhovna Rada of Ukraine for its consideration the Draft Act *On Gambling Organization and Maintenance Activities in Special Gambling Zones*. However, the particular terms for adoption of the said bill are not provided under the *Gambling Ban Act* and thus, the period of the total ban for gambling activities is indefinite.

Veto

Just a reminder that following numerous pickets and protests by entrepreneurs of the gambling business and employees, in particular the Casino of Ukraine Association, and considering the negative consequences of adoption of the law mentioned above, the President of Ukraine imposed his veto to supplement the *Gambling Ban Act* with amendments which can be briefly summed up as follows:

(i) instead of cancellation of licenses provided for by the *Gambling Ban Act*, the effect of these licenses should be suspended till the date of creation of special gambling zones in accordance with relevant valid legislation;

(ii) the provision of the *Gambling Ban Act* as to cancellation of administrative liability for organization of gambling games should be excluded;

(iii) the effect of Articles 24-25 and paragraphs 2-5 of the Article 26 of the *On Compulsory State Social Insurance in Case of Unemployment Act of Ukraine*, should be extended to employees of gambling establishments whose unemployment is connected with the ban on the gambling business in Ukraine.



Economic and legal aspects

However, the political pragmatism of Ukrainian MPs, with the coming presidential election to be held in January 2010, prevails over the economic and legal aspects of the *Gambling Ban Act* coming into force, *i.e.*:

(a) large scale liquidation of gambling establishments and considerable losses incurred by the owners of these establishments;

(b) rise in unemployment and breach of the constitutional right of an individual to work at a time of the ongoing world economic crisis which still effects Ukraine;

(c) no state compensation of the investments made by business entities into gambling business in Ukraine;

(d) a reduction in the amount of taxes being received by the state

budget and rise in social security payments.

Even the number of valid gambling licenses and operators engaged in gambling and potential proceedings (whether in Ukrainian courts or, under certain circumstances under BITs in ICSID) against Ukraine did not persuade Parliament to amend and supplement the *Gambling Ban Act*.

Supporting the mentioned reasoning foreign and Ukrainian gambling experts concur with the view that a total ban on the activity of the gam-

bling business will lead to the criminalization/moving into the shadow economy of this business sphere in Ukraine and will worsen the investment climate in Ukraine for foreign investors.

As far back as the early 1990's two essential conditions for effective regulation of the gambling business⁴ were specified:

(i) separate licensing from politics; and

(ii) tighten controls by the regulator and operators.

Unfortunately, even the first condition failed in Ukraine, as once again Ukraine followed Russia's approach to regulation (impose ban and zoning of gambling) irrespective of its own interests and lucrative approaches to this issue. ■

⁴ Arthur Neilson, "Government Regulation of Casino Gaming in Australia," in Eadington & Cornelius, eds., *Gambling and Public Policy* (Reno, NV: Institute for the Study of Gambling & Commercial Gaming, University of Nevada, 1991), p. 369.