



ALL-IN@EiG 2014

CO-ORDINATED ADVICE ON A GLOBAL SCALE



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WELCOME TO EiG 2014

As we say goodbye to the sunny metropolis of Barcelona, welcome to this year's EiG in...Berlin! Yes, Berlin, the capital of Germany, the market which can probably be considered as causing the most severe headaches for operators over the past few years. The country whose state monopoly on gambling has been subjected to hundreds of lawsuits over the last decade and substantially failed before European and German courts. And finally, the country which, at the time of writing, has not managed to award any licences under its controversial amended Interstate Treaty on Gambling after deciding to open the market for sports betting for up to 20 operators for an "experimental phase" more than two years ago.

Hosting the EiG 2014 in Berlin therefore seems both bold and logical. The regulatory framework in Germany is – again – ripe for change. A system of preserving state monopolies under the guise of honourable aims while primarily pursuing fiscal interests misjudges realities in the age of the internet and is blind to the requirements of European market freedoms.

So, where do we stand in Germany? On 2 September 2014 the regulator (the Interior Ministry of Hesse, which is competent to award the sports betting licences) announced its decision as to which applicants will be awarded the licences. As expected and as the regulator previously stated, the regulator refrained from awarding the licences immediately, allowing the rejected applicants to file for injunctive relief within a 15 day window. Unsurprisingly, most if not all of the rejected applicants (up to 21) chose to do so.

On 17 September 2014 the administrative court Wiesbaden granted the injunctive relief claim of at least one operator, which ultimately stalls the licensing process. At the time of writing, it is unclear by when all claims and appeals on this matter are going to be resolved. It does not seem unrealistic that a resolution allowing the regulator to finally award the licences may take until 2015. Considering that any potential licences will expire on 30 June 2019, any further delays will likely have a material impact on the value of such licences. And this comes in a market in which operators are already subject to a 5% turnover-based tax on sports bets.

On the bright side, however, due to the problems with the German licensing regime, we may see a renaissance of the short-lived Schleswig-Holstein model of 2012/2013. The newly elected government formed between the Conservatives and Greens in Hesse, the state which is responsible for the grant of the sports betting licences, stated in its 2014 coalition agreement that it regards quantitative restrictions as misguided policy and that it seeks to promote an open licensing regime in line with European laws.

But, of course, Germany has not been the only jurisdiction posing challenges to operators. In addition to the point-of-consumption tax regime, a new British licensing regime will be introduced by the Gambling (Licensing and Advertising) Act 2014, which received royal assent in May 2014, and will enter into force on 1 November 2014. The new Act will require any operator wishing to offer their services to British players to obtain an operating licence from the Gambling

Any operator licensed in an EEA or whitelisted jurisdiction will have to apply for a continuation licence by 23 October 2014 in order to continue doing business in Great Britain. The implementation of the new Act was delayed by a month following a challenge brought by the Gibraltar Betting and Gaming Association in a judicial review heard in late September 2014, which argued that the point of consumption licensing regime infringes upon European market freedoms. However, on 10 October 2014 the High Court rejected the judicial review saying that the UK Parliament “was well within its rights to act as it did”. The new licensing regime will therefore go-live from 1 November 2014.

Encouragingly, in some major markets, we also have seen new opportunities arise for operators over the last 12 months. In Japan, draft legislation has been introduced which aims to open the market for land-based casino operators in 2015 so that a casino presence will be established before the Tokyo Olympics in 2020. If this draft legislation is successfully enacted, it remains to be seen whether the experiences gained with this project will also result in potential new prospects for remote operators. Poland, one of the most important markets

in Eastern Europe, is dealing with its compliance issues with European market freedoms by considering draft legislation which would finally permit foreign operators to enter the Polish market. And Spain and Italy, both of which have at the forefront of gambling regulation over the past few years, are making regulatory changes that are expected to increase the popularity of gambling in those countries and create new business opportunities for operators.

We hope that you enjoy the articles in this brochure, which touch upon the topics mentioned in this introduction and more. We look forward to a successful EiG 2014 and an eventful next 12 months.



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EUROPE GAMING IN THE CLOUD

Cloud computing services and technologies are growing and evolving rapidly. However, cloud computing also presents legal risks regarding data security and the processing of personal data. This has prompted several significant regulatory initiatives in the EU.

Cloud computing refers to the evolution where information technology resources are separated from the underlying infrastructure, and dynamically scalable virtualised resources are provided “as a service” over the Internet (“the cloud”). Instead of the traditional computing model based on buying and maintaining private computer systems and software, cloud computing focuses on centralized services. According to prominent security experts and programmers, apart from the term, the technologies to which cloud computing refers are nothing really new. What has been happening over the past few years, however, is that new computing services and technologies, rebranded under the more generic name of “cloud computing”, have been fuelling the drive towards it.

As with any other type of services, games may be offered via cloud-based technologies as well, allowing the gamer to access the gaming offering through smart phone, tablet, personal computer or even a television. The only thing needed by a gamer is a sufficient Internet connection. Cloud-based gaming offers particular advantages, e.g. allowing access to games from whatever place on whatever device, and allowing a user to pick up a game wherever it was left regardless of the

console used. It also allows the business to innovate, for example, by allowing players to compete with each other regardless of the platform used. The importance of gaming services offered on social network sites, which are also cloud-based, shows the importance of this computing model in the gaming industry.

But the advantages and benefits offered by cloud computing are accompanied by particular legal risks as well. Data security and the location and processing of personal data are among the major concerns mentioned when contracting cloud-based services. Other particular risks exist as well, but may be of lesser importance in a gaming context, such as data portability and interoperability between cloud service providers.

Particularly in relation to the processing of personal data, it is likely that the gaming provider will process some forms of personal data of the gamer, including the latter’s name and other identification data, but also individual information relating to the gamer’s device such as an IP address or a telephone number. General EU data protection laws (as implemented at a national level) are likely to apply in this scenario. This would, for example, mean that the gamer should be well-informed

about which data is collected and maintained, for which purposes these data are used and which categories of recipients may come into contact with the data. Also, and this is particularly relevant in a cloud computing context given its cross-border nature, the question arises as to whether personal data are transferred solely within the European Economic Area (“EEA”). Processing outside of the EEA is only allowed in exceptional circumstances, as prescribed by law. These and other concerns make it clear that, certainly from a data protection point of view, “go cloud” – decisions should be well-planned on the legal, commercial and strategic level.

However, regulators have not stood still during the exponential growth of the cloud offering for all industry sectors as well as for the public sector.. Several administrative authorities in the EU Member States, and in particular data protection authorities (DPAs), have issued recommendations or guidelines in relation to the offering or uptake of cloud computing services.

Next to regulatory initiatives on the local level, the European institutions have turned out to be a driving force for the further development of cloud computing. Along with this development, emphasis has been put on the regulatory framework surrounding cloud computing, including a particular focus on data protection issues. As an example, the Working Party 29, the European data protection advisory body, has issued a lengthy opinion on the use of cloud computing and its impact

on data privacy. Next, the European Commission has issued a strategic plan in which it sets out its strategy to boost cloud computing offerings and use throughout the Internal Market. This strategic plan contains a number of action points, several of which directly relate to issues of processing of personal data. One of these is the drafting of a data protection Code of Conduct for cloud service providers. For each of the action points undertaken by the European Commission, specific expert groups, containing representatives of the industry and various other stakeholders, have been established. DLA Piper, as an expert cloud law firm, is strongly involved in a number of these policy initiatives.

As a result of the Commission’s action plan, new regulatory initiatives may be issued in the coming months or years on a voluntary basis. It will be interesting to follow up on how these could further impact the use of cloud-related technologies in the gaming industry.



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RISK

WHAT'S YOUR APPETITE?

The licensing process in Great Britain requires operators to assess their rationale for taking business from jurisdictions where they do not hold a licence. Some operators are faced with this task for the very first time and the consequences are already visible.

As legal advisors to the online gambling industry for a number of years, we have been involved with various projects where operators and/or their suppliers have had to assess the legality of their operations by considering the application of various laws around the world to their on-going (or legacy) activities. Such an exercise would ordinarily be undertaken at the behest of a third party, be it a bank, investor, listing authority, IPO sponsor or nominated advisor. But for such a requirement, most operators took their regulatory lead from their banks or software suppliers who would contractually require them to exclude certain territories.

It was probably the first wave of US licensing of online gambling activities a few years back which led to certain European operators and suppliers having their risk rationales assessed, for the first time, by a regulator. This proved quite a challenge as it became clear that certain parts of the regulators' community did not appreciate the concept of a "grey" market, but instead expected their licensees to operate with affirmative legality.

The recent licensing process in Great Britain has required all applicant operators to disclose to the Gambling Commission (the "**Commission**") the legal justification for their deriving revenue from jurisdictions in which they did not possess a licence. We are yet to see how this particular aspect of the licencing procedure pans out as, at the time of writing, most applications are still in the final stages of being processed.

The Commission's stated aim was to give an understanding of the sophistication of prospective licensees, which goes to the heart of "suitability" and financial viability.

The process has been quite cathartic for certain operators who have had to assess their jurisdictional breakdowns for the first time and prepare themselves for the road ahead. Some fairly dramatic consequences ensued as operators closed jurisdictions down, sold certain parts of their business to other operators or came to the conclusion that the regulatory impositions of the Commission were too great for them to entertain.

Sadly, in what is a collegiate industry, one unsavoury aspect of the licensing process was the continued rumour that certain operators were pressurising the Commission to adopt a particular approach in relation to competitors and certain jurisdictions from where they derive revenue. It was a real shame that certain operators felt the need to adopt such tactics despite the very clear guidance from the Commission that operators were entitled to take different views on risk and adjust their businesses accordingly and that the Commission would not necessarily judge them any differently provided that the rationale that they adopted was a clear and justifiable one.



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JAPAN

CURRENT STATUS OF CASINO LEGALIZATION

Casino gaming is currently strictly prohibited in Japan. However, a draft bill that would legalize casinos has been submitted to the national Diet and is under discussion. The bill is expected to pass within this year, and if the process goes smoothly, casinos will be operating in Japan before the 2020 Tokyo Olympics.

CURRENT STATUS OF THE CASINO LEGISLATION IN JAPAN

Currently, gaming is generally banned in Japan. There are a few limited exceptions to the ban on gambling with respect to government-managed sports betting and certain government sanctioned lotteries. Pachinko, a type of quasi-slot machine and vertical pinball-like game, at which players may win cash is not prohibited but is also not specifically recognized as a legal form of gambling. Casino gaming, including online gaming, is strictly prohibited in Japan.

A group of lawmakers called the Lawmaker Alliance for the Promotion of Integrated Resorts (the “Alliance”) prepared a draft bill promoting integrated resorts (i.e., resorts that include a casino) (the “Bill”) in 2011. However, the Bill languished and was not submitted to the national diet for consideration. Support for the Bill has increased since Tokyo was chosen as the host city for the 2020 Olympic/Paralympic Games on

8 September 2013. As a result, the Bill was submitted to the national diet for consideration on 5 December 2013 with several minor changes.

BRIEF OVERVIEW OF THE BILL

Legalizing casinos will require not only legislation to create an exception to the existing law that prohibits casino gaming but also a new governmental organization called the Casino Control Committee.

The basic regulatory framework set out in the Bill is as follows:

- A casino must be operated by a licensed private (non-governmental) operator only in certain geographic areas which are to be designated by the state upon the application from local governments;
- The primary purpose is to contribute to a local economy through tourism and under the appropriate supervision and management of the government;

- The government shall take necessary action to foster tourism, promote Japan as the premier international sightseeing destination, and respect the opinions of local governments;
- The importers and manufactures of gaming machines, systems and tools used in a casino and the service providers in casino facilities will be required to follow the restrictions set by the Casino Control Committee;
- In order to prevent illegal activities and negative influences that can be associated with casinos, the government shall implement necessary measures to address various issues such as maintenance of fairness in casino gaming, appropriate use of money and tips, banning organized crime members from gambling at casinos, maintaining a safe and peaceful environment and the healthy development of teenagers;
- The Casino Control Committee will regulate the casino business and supervise casino operators, including examination of license applications; and
- A licensed casino operator must pay a levy to the state and local government, and the governments also may collect entrance fees from visitors.

The Bill does not provide any specific requirements for licensing, and a concrete regulatory framework is to be provided in another separate act (the “IR Development Act”), which is scheduled to be approved one year after the enactment of the Bill.

FUTURE PROSPECTS

Although there have been some objections to the Bill based on the assumption that casinos could targeted by organized crime (*yakuza*), result in an increase in gambling addiction or have a negative impact on the morals of teenagers, the Bill has strong support and several local governors are very enthusiastic about the Bill. The Alliance has about 150 members from across the political spectrum, and Prime Minister Shinzo Abe is an honorary chairman of the Alliance. Thus, it appears highly likely that the Bill will move forward. Actually, during Abe’s official trip to Singapore in May, he visited two IR facilities in Singapore to see how they are operated.

Discussion on the Bill in the Diet committee started on 18 June 2014. Despite the fact that the regular session of the national Diet has ended for this year, the Bill is still being reviewed by the committee, which implies that lawmakers regard the Bill as an important political matter. Prime Minister Abe has indicated a strong intention to see that the Bill is considered in the extraordinary Diet session to be held this autumn. Given that Mr. Abe’s party is the ruling party in the Diet, it is likely the Bill will pass this year.

More concrete details such as regulations for operation of an IR will be determined through the IR Development Act, which is expected to be enacted in 2015. Therefore, many anticipate that casino gaming will be legal in Japan before the Olympic/Paralympic games come to Tokyo in 2020.



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POLAND OVERVIEW OF EXPECTED CHANGES



The Polish gambling market is evolving rapidly. The Polish Parliament is currently considering four new draft amendments that would liberalize the traditional, restrictive legal regime regulating gambling and make it easier to offer online gambling services in Poland.

The Polish licenced gambling market is heavily dominated by traditional, land-based gambling. With one small exception, the Polish regulator prohibits all online gambling activity. The exception is online betting conducted under a license granted by the Polish regulator. This license can only be granted to companies which are registered in Poland. In addition, a 12% gaming tax is imposed on the turnover of Polish betting operators. Therefore, both licensed Polish operators and their competitors from other EU countries have cause for complaint: Polish operators pay very high taxes while the government takes no effective action to enforce the prohibition on operating without a Polish licence (for example, blocking the websites of unlicensed operators); and – as described above – operators which are registered and licensed in other EU countries simply cannot offer their services in Poland (which does not seem to be in line with the freedom of services principle).

However, this restrictive legal regime may move in the direction of liberalization if four new draft amendments to the Polish Gambling Act are enacted.

The first draft amendment was published on 29 May 2014 by the Minister of Finance and was modified on 5 August 2014. It is now being considered by both governmental and non-governmental institutions. If enacted, it will allow EU gambling operators to obtain a Polish licence and conduct gambling activities in Poland, including online betting, through a Polish branch or subsidiary. Its purpose is clear: to bring the current legal regime into line with EU law. The opening of a branch will mean the creation of a permanent establishment, which in turn means that taxes will be paid in Poland. Moreover, it will make it harder for EU operators to continue offering their cross-border gambling services in Poland under the freedom of services principle because unless those operators are able to demonstrate the

temporary nature of their Polish operation, the freedom of establishment principle will take precedence. A Polish branch will be subject to exactly the same obligations as a Polish subsidiary with respect to the terms and conditions of running an online betting business, including the obligation to have a Polish website address (".pl"), capital requirements, consent for any changes in the operator's structure, and reporting obligations.

The initial draft of 29 May 2014 also included a new requirement to implement a responsible gaming policy which should be visible on the operator's website. However, this requirement did not appear in the new version of 5 August 2014. Further proposed changes concern facilitating the organization of small prize lotteries and prize bingo, changing the definition of audiotext services, and some changes in the method of calculating the gaming tax. However, no changes are proposed with regard to the level of the gaming tax.

Apart from this draft amendment prepared by the Minister of Finance, there are three other amendments which are going through the legislative process in the Polish Parliament. The purpose of the first one is to allow the Internet to be used as a new distribution channel for selecting numbers, signs, and other features in number games, as well as stakes and winnings. This change has already been notified to the EC; if enacted, it will only have an impact on the state-owned company Totalizator Sportowy, which has the monopoly on number games in Poland (draft amendment of 13 June 2013).

The second one should allow online poker and poker games/tournaments between players in poker playing points (i.e. poker as a type of sport). In the case of small prize pools not exceeding PLN 760 (approx. EUR 190), this could be done without a licence; poker played against

the operator (i.e. poker as a type of gambling) would still only be permitted in casinos (currently, poker games and tournaments may only be held in casinos). Under this amendment, any limited liability company or joint stock company with its registered office in any member state of the European Union or any member state of the European Free Trade Association (EFTA) would be able to obtain a licence. Furthermore, it should also permit the advertising of poker as a type of sport (draft amendment of 20 January 2014, revised on 17 June 2014 and on 25 June 2014).

The final amendment should facilitate the organization of prize lotteries and prize bingo by public benefit institutions (draft amendment of 1 April 2014).

The draft amendments described above demonstrate the steady trend towards the liberalization of the Polish gambling market. Although the biggest challenge remains the same (i.e. the level of the gaming tax), the proposed drafts may change the Polish gambling market and bring it into line with other EU countries. Gambling operators should keep their eye on the changing legal environment in Poland. Sooner or later, the provision of online gambling (not only betting) services by both EU-based and Polish companies will become a reality.



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PATENTS ON GAMING AND GAMBLING TECHNOLOGY

A SAFE BET?



Patent protection may be available for numerous aspects of gaming and gambling technology. However, European patent law provides relatively strict requirements for inventions in this area. Thus, the patentability of gaming technologies must be evaluated on a case-by-case basis.

Over the past decade, the gaming and gambling market has grown rapidly. In particular, online services and gaming applications for mobile devices appeal to a new, globally expanding customer group. This led to a boom in the industry, spurring the development of new, attractive gaming and gambling possibilities. At the same time, with more and more competitors entering the scene, providers might want to consider patent protection for their technology in order to keep competition at bay.

Patent protection is conceivable for various aspects of technology used for gaming and gambling, such as system architecture, game features, user interfaces or organizational functions. The European Patent Register contains, *inter alia*, patents for a game system providing multiplayer online role-playing, for a computer program for processing bets or games of chance, for a system permitting the proposal and execution of entertainment games or wagers, and for an authentication method for online gaming. So does this mean that online gaming and gambling providers can safely bet their money on patent protection for their technology – or even that they must seek patent protection in order to stay in the game?

Considering the expansion of the online and mobile market, it does not come as a surprise that most patent applications in the area of gaming and gambling technology concern computer programs. But beware: patents in this area are not as easily granted as the above-mentioned examples might suggest. Applications including technical aspects are generally patentable if they are new and involve an inventive step. However, European patent law presents several pitfalls for patent applications involving gaming and gambling technology: *firstly*, plans, rules and methods for games are per se excluded from patentability under Art. 52 (2) (c) European Patent Convention (“EPC”). *Secondly*, patent protection is not available for computer programs “as such”. Nevertheless, inventions including computer programs which have a “technical character” may be patented. According to the European Patent Office (EPO), this is the case if the computer program is capable of bringing about a further technical effect going beyond the usual physical interactions between the program and the computer on which it is run. This “further technical effect” may e.g. relate to the control of an industrial

process, to the internal functioning of the computer itself, or to its interfaces in order to influence the efficiency or security of a process.

Under applicable case law, computer programs are considered patentable if they address the solution of a certain technical problem using technical means. Even computer programs that address technical as well as non-technical problems (“mixed” inventions) are generally patentable. However, the assessment of the necessary “inventive step” is limited to those aspects of a computer program that relate to or at least influence the solution of a technical problem using technical means (cf. EPO, September 26, 2002, T 641/00 – *Two Identities/COMVIK*; BGH, October 26, 2010 – X ZR 47/07 – *Display of Topographic Information*).

With respect to computer implemented gaming and gambling technology, this means that many inventions manage to overcome the first obstacle of general patentability but are denied protection for lack of an inventive step because their innovative features do not address specific technical problems (e.g. BPatG, April 12, 2004, 2 Ni 32/11 (EU) – *Contest Evaluation*; EPO, November 27, 2007, T 859/2007 – *Casino Game*). The EPO decision *Video Game/KONAMI* (June 2, 2006, T 0928/03) illustrates the problem: the applicant sought a patent for a video game in which soccer players are highlighted by a ring-shaped guide mark in order to improve their on-screen visibility. This combination of mental (user interaction with the video game) and technical (enhanced visibility) tasks was sufficient for general patentability under Art. 52 (2) (c) EPC. However, patent protection was denied for lack of an inventive step because the ring-shape of the guide mark was considered a non-technical, aesthetic feature, and the mere enlargement of the guide mark as such was considered obvious to the programmer of a video game.

In line with the foregoing, the number of patent applications for gaming and gambling technology that have been denied protection or that have been withdrawn by the applicant by far exceeds the number of patents that have been granted in the area. It is therefore essential for prospective applicants to evaluate their inventions on a case-by-case basis in light of the rules outlined above. At the same time, patentability of computer programs is an evolving area of law, and many open questions remain. In summary, patent protection for gaming and gambling technology is not a game of chance – but it is not a safe bet either.



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WHAT LEGAL ISSUES

SURROUND BITCOIN IN THE GAMING SECTOR?

Many questions surround the use of Bitcoin, a popular unregulated virtual currency. Gaming operators and national regulators have taken different approaches with regard to accepting and regulating the use of Bitcoin. However, many risks and uncertainties remain.

Bitcoin is considered a 'cryptocurrency' since it uses cryptography in order to control its creation and transfer. It was created in 2009 by Satoshi Nakamoto, an anonymous person whose real identity is still unknown. Bitcoin is unusual in that it is not controlled by any public entity. It is based on a peer-to-peer network that allows one to hold and transfer it in an almost fully anonymous manner.

LEGAL STATUS OF BITCOIN

Bitcoins are a kind of electronic currency, but it is unclear whether they fulfil the conditions to qualify as e-money in accordance with EU Directive 2009/110. Indeed, the main peculiarities of Bitcoin are the following:

- This currency depends on a specific exchange rate which is not linked to a traditional currency but is merely based on the market conditions;
- Bitcoin lacks any link to a traditional currency, which might cause issues when holders want to convert them into real currency; and
- There is no control or surveillance by a public authority but only by private entities.

WHAT ARE THE LEGAL RISKS FOR BITCOIN?

The main issue usually raised by opponents to the usage of Bitcoin pertains to the potential breach of anti-money laundering regulations. Many European countries, including Italy, provide for specific rules applicable to land-based casinos and gaming halls, as well as gambling websites. Under anti-money laundering regulations, the

withdrawal or deposit of money in a gaming account using payment means which are not held in the name of the gaming account holder may indicate a suspicious transaction.

Some commentators argue that transfers of bitcoins are even more traceable than ordinary cash transactions. However, the question is whether they can be easily traced by public authorities in case of investigations. Will gaming operators accept payments only in bitcoins held under the name of the gaming account holder? Will gaming operators accept being subject to more stringent investigations by public authorities in cases of Bitcoin transactions?

Also, Bitcoin is a virtual currency that is not regulated and is usually treated as a commodity rather than a currency itself. There is no public authority supervising it and transactions are not processed by "regulated" entities such as banks or financial institutions. Such conditions make it more difficult for public authorities to monitor these transactions.

An additional interesting issue affecting Bitcoin and gaming related matters is how to calculate the applicable taxation in case of Bitcoin transactions. In countries like Italy, gaming duties are paid for most of the games on a monthly basis at the end of each month. However, given that the value of bitcoins can considerably fluctuate over the course of a month, if it is considered only the value at the time of the payment, this might be an additional "gamble" for operators and even for players themselves in countries where gaming winnings are not taxed at the source.

Finally, the potential for cyber-attacks represents a further threat to this currency. It poses the additional risk that misuse of bitcoins might lead to considerable variations in the value of bitcoins, as occurred in 2011 when their value fell from \$ 17.50 to \$ 0.01.

REACTION BY REGULATORS TO BITCOIN

Both the Bank of France and the Bank of Italy recently issued reports warning of the potential risks associated to this type of currency. Likewise, the Monetary Authority of Macau (AMCM) has issued a warning to Bitcoin users that trading in the virtual currency in Macau could break the law, although it did not expressly declare that the usage of Bitcoin will be forbidden outright.

The opposite approach has been adopted by the Isle of Man's government, which recently announced that it will proactively monitor and control innovations within the digital currency arena. The goal of the Isle of Man regulator seems to be creating a friendly environment in order to encourage companies operating within the space to flourish.

Also, the regulator in Alderney has opened the race for the leadership in the Bitcoin sector. The Alderney regulator's objective is to make Alderney a global hub for Bitcoin, although the initial plans for a gold-backed version of Bitcoin have been shelved.

.COM VS. .COUNTRY GAMING WEBSITES AND ACCEPTANCE OF BITCOIN

It is uncertain whether gaming operators are going to accept Bitcoin as a valid payment method. The first Maltese-licensed operator to accept Bitcoin was

Vera&John. However, the Maltese regulator later forced Vera&John to stop accepting Bitcoin. Likewise, to our knowledge, no other European regulator has permitted the acceptance of payments in Bitcoin so far.

On the other hand, a much more liberal approach is followed by Curacao, where Curacao-licensed gaming websites accepting Bitcoin are considerably flourishing.

Also, in general, operators engaged in jurisdictions without clear regulatory frameworks always face uncertainty about the appropriate approach in relation to Bitcoin. Russia, in particular, is one of the jurisdictions in which these uncertainties exist.

The risk is that players willing to gamble in Bitcoin will be encouraged to play on unlicensed websites that in some instances are in breach of local gambling regulations. There is no doubt that both financial and gambling regulators will soon attempt to impose a regulatory framework for Bitcoin with the goal of protecting people trading with such virtual currency. However, the issue is whether a type of currency that was created for an unregulated environment can be regulated.



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SPAIN

NEW OPPORTUNITIES

Spain has introduced recent regulatory changes that are expected to lead to a significant growth of the Spanish gambling market. In particular, the introduction of slots and the launch of a new public tender for general gambling licenses is expected to generate this growth.

Although Spain is considered one of the most relevant European markets for online gambling operators, the industry and market specialists agree that Spain continues to have remarkable potential for growth. Indeed, since the new regulatory framework was launched over three years ago, operators doing business in the Spanish market have faced a number of difficulties that limited their ability to offer attractive products.

The Spanish authorities have not ignored this situation, and in recent months, they have taken a number of steps aimed at making the applicable regulations more business-friendly (while continuing to ensure high regulatory standards) and creating a more attractive regulated market.

In this respect, the first significant measure that has been adopted consists of a review of the regulations applicable to some of the most successful products in the market. In this sense, betting operators have seen how the previous system, which was based on a unique (and rigid) official catalogue of events and markets, no longer applies. In this new context, sportsbook operators are legally entitled to offer their own catalogues of events

and betting markets, which allows them to market a wider range of bets (and, therefore, increase the attractiveness of their products).

A similar step was made with bingo. This game has been significantly liberalized by abandoning a system of pre-defined modalities and allowing operators to offer all types of bingo games as well as permitting them to use elements other than numbers for the development of the games (such as, for example, symbols).

Although the above-mentioned measures are important, the most exciting news has come from the publication of the decrees allowing the operation of new games. According to these decrees, licensed operators in Spain will be allowed to offer exchange betting and online slot machine games in the very near future. Introducing these types of games should be a very relevant factor that will make the market more dynamic and promote growth (as has been the case in other regulated markets that followed a similar approach, such as Italy). Slot machine games were a key product in the operators' portfolios before the regulations were approved. Therefore, counting again with it in a regulated environment will improve the business expectations of operators in Spain.

Indeed, all these regulatory developments are expected to lead to significant new opportunities in the Spanish market. Actually, specialized media – such as Gambling Compliance – estimate that these new developments should cause the Spanish market to double in size in 2015 and follow a trajectory of steady and sustained growth in the upcoming years.

In this respect, the next major regulatory step will be re-opening the market to new entrants. This will be implemented by launching a new tender for applying for general licences in Spain. Operators already present in the regulated Spanish market will only be allowed to apply for the licences covering the new games once the above-mentioned tender has been officially called. The Spanish authorities have adopted this approach with the intention to ensure that all the licensed operators launch the new range of games at the same time (and, therefore, ensuring that no operator encounters a competitive disadvantage).

The timeline for completing this new licensing process (culminating with the actual launching of new products) remains uncertain. Nevertheless, the authorities intend to move as quickly as possible. Currently, the process is expected to be completed during the first quarter of 2015. Whether this timeline is accurate remains to be seen. In any case, however, what is sure is that the Spanish authorities have launched a process that should produce dynamic growth in the market.



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UK STRIKING THE BALANCE IN ADVERTISING

The consistent growth and diversification of gambling advertising has become an increasing source of concern in the U.K. following a fundamental change in online gambling regulation. It has prompted the UK government to call on regulators to re-examine existing rules on gambling advertising.

Consistent growth in the British gambling industry has been driven, in part, by a steadily increasing social acceptance of online gambling. However, the proliferation of advertising and sponsorship by online gambling operators, particularly surrounding sporting events, is increasingly a source of consumer concern in the UK. Gambling advertising is ubiquitous today – insistent appeals to participate in various forms of gambling are common in virtually all kinds of media. The pervasiveness of online gambling advertising has led to a number of inquiries into the advertising and promotion of gambling products and services, with familiar questions asked as to how best to regulate the industry, protect vulnerable consumers and ensure the integrity of the industry itself.

The Gambling (Licensing and Advertising) Act 2014, due to come into force on 1 November, will fundamentally change the way in which online gambling is regulated in Britain and will bring a wider range of online gambling operators within the ambit of the British Gambling Commission's licensing regime. Each licensee will be required to comply with the Commission's licence conditions and codes of practice ("LCCPs"), which include a suite of important rules on social responsibility and fairness and openness to customers. Part of this key change has seen very active and vocal public debate in the UK about a range of gambling advertising issues, from pre-watershed TV advertising to the corruption of sporting events.

The increased volume and diversification of gambling advertising has prompted the UK government to call on regulators to re-examine existing rules on gambling advertising. Technology and consumer preference continue to evolve at a remarkable pace. As the media landscape rapidly transforms, gambling companies have shown themselves eager to use new methods for promoting their products and services, seeking to take advantage of new channels of communication and social networks on the internet. The advent of tablets and similar user-friendly devices, together with the continued development of interactive and social media, has made it easier for people to gamble, particularly among demographics which are more exposed to these technologies. Second screen activity is now the norm – many gambling services now rely on consumer second screen consumption, like mobile apps, to capitalise on appetites for gambling during sports events. In November 2013 Ofcom, the UK’s media regulator, found that the number of gambling advertisements on television had increased six-fold to 1.39 million per year since deregulation in 2007. The prevalence of advertising and sponsorship by online gambling operators has invariably raised concern about the exposure and potential impact this may have on the youth in the UK.

Prompted by the UK government’s review, the Commission recently launched a wide-ranging consultation seeking views from the public and the industry on the level and nature of social responsibility protections that gambling operators must provide. In doing so, the Commission has sought to address growing concerns about the increase in gambling advertising leading to a ‘normalisation’ of gambling within British society.

Under particular scrutiny are connected issues related to: (i) the fairness of free bet or bonus terms; (ii) social responsibility of gambling inducements and rewards; and (iii) the fairness and openness of advertising. The Commission’s proposals are designed to complement the UK government’s broader review of gambling advertising and consumer rights generally.

On its face, many of the Commission’s proposed changes to the social responsibility provisions seem sensible. The proposals seek to reinforce, rather than revolutionise, existing LCCP provisions and guidance in relation to the promotion of free bets and bonuses and, in particular, as regards to the accessibility of significant terms and conditions. Likewise, the Commission seeks to revisit the balance between operators’ legitimate use of inducements and marketing incentives, against the risk that inducements might contribute to problem gambling.

As part of its review, the UK government has also asked: (i) the Remote Gambling Association to make recommendations to the Government on any changes needed to the industry voluntary code, including on the suitability of the 9pm watershed arrangements; (ii) the Advertising Standards Authority to report on the effectiveness of its enforcement action; and (iii) the Committee on Advertising Practice to reconsider its existing advertising code.

Advertising is one of the many environmental factors which contributes to the prevalence of problem gambling. It is unrealistic to expect that general advertising codes and restrictions themselves would have a preventative effect on problem gambling. Gambling operators might reasonably ask what the cost of implementing the British regulator’s new rules on responsible marketing and advertising would be. However, operators with long-term ambitions in the British market should be conscious of the increasing importance that socially responsible marketing and advertising will have for a company’s image. The benefits of creating a favourable impression as a responsible and trustworthy operator may serve to counterbalance any cost of complying with any new rules.



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ITALY

SPORTS AND HORSE BETTING MARKETS ON THE RISE!

Recent and upcoming regulatory changes in Italy are expected to increase the popularity of betting on sports and horses in the country.

Recent regulatory changes as well as upcoming changes are expected to boost the Italian sports betting and horse betting markets after years in which they have been overshadowed, first by poker games and then casino games.

The coming into force in July 2013 of regulations allowing the offering of types of bets and events that are not included in the official schedule published by the Italian gambling regulator, AAMS, represented a major opportunity, especially for foreign sports betting operators. Indeed, foreign operators for whom a major strength is the variety of types of bets and events offered to their customers on .COM platforms were previously prevented from relying on such a massive advantage on their Italian platforms.

The scenario has now completely changed. Local operators that do not have experience on such new types of bets/events are suffering from the competition from foreign operators. This explains the increase in the market share of both William Hill and Paddy Power, which are still new in a market that – with the exception of poker games – has been controlled for years by the three major Italian operators, i.e. GTech/Lottomatica, SNAI and Sisal.

And such change is expected to be further boosted if the Government also changes the tax regime for sports betting games as part of the measures implementing the so called “*Delega Fiscale*” decree. In fact, the current turnover-based tax regime for sports betting prevents operators from offering odds in line with their .COM offering without taking major risks of losses. However, the Government showed some openness towards a change in the taxation for sports betting, switching to a 20% gross gaming revenue tax, which was already adopted for casino and cash poker games with good results. The upcoming measures enforcing the principles set forth in the *Delega Fiscale* Decree, which must be adopted by the end of the year, are a good opportunity to put in place such important changes.

However, the measures enacting the *Delega Fiscale* decree also have the purpose of recovering the horse betting market from the current decline. Indeed, Italy has traditionally been a country where the horse betting sector has been quite strong, with all the main cities hosting their own racecourses. However, the popularity

achieved by other games and a burdensome tax regime inherited from previous regulations led to a strong contraction of the market.

The new regulations, on the other hand, are meant to make horse betting more attractive for players. And one of the options on the table is to allow the launch of types of bets with international liquidity, which was already prescribed by AAMS regulations some years ago. At that time, because of technical difficulties, their offering was then suspended, but this does not prevent their offering from re-emerging in the future.

Finally, the launch of bets on virtual events at the end of 2013 was shown to be very successful, especially with reference to their offering in betting shops, which was mainly because of connection issues affecting the remote offering of games. Italy is expected to be a market generating €1 billion in turnover for bets on virtual events, and if such connection issues are sorted – as is expected to occur shortly – the market might grow considerably.



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VAT AND ELECTRONICALLY SUPPLIED SERVICES

From 1 January 2015, there will be a fundamental change in the place of supply for VAT purposes of electronically supplied services by EU established businesses to non-business customers.

Online gaming and gambling constitutes electronic services, and this article deals with the new rules for electronic services.

WHAT IS CHANGING?

The place of supply rules govern where a supply takes place for VAT purposes. It determines where suppliers must register for VAT and charge VAT on their supplies. At present, where the supplier is established in the EU the place of supply of businesses involved in electronically supplied services where the customer is a consumer (i.e. a private individual or an organisation, such as a charity, which is not in business) is the jurisdiction where the supplier is established. The supplier is therefore able to charge VAT at the rate in the jurisdiction in which it is established, regardless of where its customer is based.

From 1 January 2015, there will be change in the place of supply of these services where the customer is a consumer. Under the new rules, the place of supply will be **where the customer belongs** (or is presumed to belong). A customer will generally belong where it is registered, has its permanent address or usually lives but special new presumptions have been introduced to assist suppliers conclude where the VAT is due. As a result of the change in the place of supply, a supplier may need to be registered for VAT in each EU Member State where its customers are based (potentially up to 28 Member States). A mini one stop shop has been introduced to alleviate the administrative burden. Crucially, the new rules end the distortion between business based outside the EU and EU based businesses. The rules for non-EU businesses and EU businesses will be the same.

WHAT SERVICES WILL BE AFFECTED BY THE CHANGE?

Services affected will include the following:

- Website supply/web-hosting;
- Databases;

- Online advertising;
- E-books/online newspapers;
- Music, films and games, including games of chance and gambling games;
- Distance teaching.

The list above is not exclusive and suppliers should give consideration to whether their supplies will be caught by the changes.

WHAT IS THE MINI ONE STOP SHOP?

The one stop shop (OSS) has been extended to EU businesses and covers telecommunications, broadcasting and electronically supplied services. The OSS is an optional system which allows payments and returns to be made electronically from a single Member State. EU suppliers must register for the OSS in the jurisdiction where they have their main place of business. Non-EU suppliers, who must have no EU establishment, can choose the jurisdiction where they would like to register for the OSS (and this will be called their member state of identification).

Using the OSS may alleviate some of the administrative burden on suppliers caused by the changes. Suppliers will be able to use the OSS, instead of registering for VAT in every Member State where it has customers.

UK: WHERE IS THE PLACE OF SUPPLY FOR ELECTRONICALLY SUPPLIED SERVICES TO BUSINESS CUSTOMERS?

Supplies of electronically supplied services to business customers will not be affected by these changes. Supplies to business customers will continue to take place **where the customer belongs**, subject to the use and enjoyment rule. This means that business customers will continue to be liable to account for any VAT due using the reverse charge (i.e. it will account for VAT in its own jurisdiction).

WHAT IS THE USE AND ENJOYMENT RULE?

The use and enjoyment rule only applies where the supply is enjoyed in the EU, but the customer belongs outside the EU (or vice versa). The idea is that if electronic services supplied to a business are effectively used and enjoyed in the EU, even though the customer is based outside the EU, EU VAT should be charged. What constitutes “use and enjoyment” is not always clear. Where a jurisdiction provides that VAT should be charged where the service is used and enjoyed, not where the customer belongs, VAT will be charged in the place of use and enjoyment.

WHAT SHOULD SUPPLIERS BE DOING TO PREPARE FOR THE CHANGE?

Businesses supplying electronically supplied services should consider:

- whether they make cross border supplies of electronically supplied services;
- how to identify whether their supplies are made to non-business customers and where their customers belong;
- where they should be registered for VAT;
- whether their services would be caught within the use and enjoyment rule – the rules are applied differently in different Member States;
- whether it would be beneficial to register for the OSS;
- how they will meet their compliance obligations in each EU jurisdiction in which they are registered.

QUICK REFERENCE GUIDE – CHANGES TO THE PLACE OF SUPPLY OF ELECTRONICALLY SUPPLIED SERVICES FROM 1 JANUARY 2015*

	EU Supplier	Non-EU Supplier
EU Non-Business Customer	Where the customer belongs	Where the customer belongs
Non-EU Non-Business Customer	Outside the scope of EU VAT	Outside the scope of EU VAT
EU Business Customer	Where the customer belongs	Where the customer belongs
Non-EU Business Customer	Outside the scope of EU VAT (subject to the use and enjoyment rule)	Outside the scope of EU VAT (subject to the use and enjoyment rule)

* suppliers should seek specific advice as to the application of the rules to their businesses, particularly where the use and enjoyment rule may operate to change the place of supply.



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ROLL

REMOTE OPERATING LICENSING LOBBY

British gambling reform is well underway. During the Summer, DLA Piper's dedicated portal assisted many operators and suppliers in applying for remote operating licences in Great Britain. Now, we have created a dedicated area for those requiring software licences by the 31 March deadline. ROLL is a unique resource designed to streamline the licensing process, providing key information, check lists and guidance.

Contact us at roll@dlapiper.com

www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com
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