

The Cyprus gambling market and the Betting Act of 2012

Cyprus' Betting Act 2012 provides further clarity on the nature of legal gambling activities in Cyprus and the requirements for operators looking to gain a licence to provide gambling services to customers in Cyprus. Andreas Neocleous, Founder, Advocate and Chairman of the Board at Andreas Neocleous & Co LLC, discusses the new Betting Act in detail and the ban on betting exchanges contained with the Act, which has resulted in a formal complaint from Betfair.

Gambling has been strictly regulated in the Republic of Cyprus since (and indeed before) the time of independence. However, following Cyprus's accession to the EU in 2004, online gambling service providers licensed in other EU Member States began to exploit a legal loophole that allowed them to operate from premises in Cyprus. The Cyprus Attorney General confirmed that nothing could be done to stop them, prompting a public debate over the legality of online gambling and culminating in a recent change in the law, which will most likely have a revolutionary impact on the gambling sector in the Republic of Cyprus.

On 11 July 2012 the parliament enacted the Gambling Law, Law 106(I)/2012 ('the Gambling Law'), which legalises the provision of certain specified gambling services and criminalises all games of chance.

Articles 3 to 11 of the Gambling Law establish a national Gambling Board ('the Board') and set out its powers and responsibilities. The Board is charged with the protection of young persons and problem gamblers. It is also responsible for the licensing and supervision of operators of

authorised gambling services, and for monitoring and combating illegal betting.

Article 12 of the Gambling Law sets out the two classes of authorised gambling services. Class A covers the provision of gambling services within licensed premises except for any services falling within class B or any horserace betting. Class B encompasses all forms of electronic gambling apart from limited benefit game machines (slot machines), lucky online casino games and horserace electronic betting.

Gambling services may be provided only by licensed persons or their authorised representatives. Applications must be submitted to the Board and are subject to Board approval. Two important requisites for approval are that the applicant has not been convicted by a court for a relevant crime and, in the case of individuals, is at least 25 years old. The Board will also require the applicant to demonstrate the possession of sufficient resources to secure the payment of players' winnings, the adequacy of systems of accounting and internal control and compliance with regulations for the protection of players promulgated by the Board. Licences are issued for one year or two years, and may be renewed on application subject to the approval of the Board (article 24).

Sections IV and V of the Gambling Law set out the detailed operational and supervisory requirements regarding Class A services. Section IV prescribes the form and type of the licence granted for licensed premises and the requirements that an operator of Class A gambling services must meet in order to retain authorisation. It also gives the Board power to suspend or revoke a licence in the event of failure to comply with the required

standards. Section V allows licensed operators of Class A gambling services to provide services through computerised marking sheets subject to approval by the Board.

Section VI of the Law deals with the requirements regarding applications for Class B licenses, provision of the relevant services and supervision by the Board. Providers of such services must show prescribed information on their website, including the registered name of the company, its registered address, the official number and date of the licence and a statement that the use of the services by any minor is illegal under the Gambling Law.

Article 54 provides that players must be registered and maintain an account with the gambling service provider, and article 58 allows betting transactions to be executed only by means of credit cards, debit cards, electric transfer and electronic money. Cash transactions are prohibited. Providers may not accept any bet unless they are satisfied that the player has sufficient funds in his account to cover the stake. Providers must maintain a bank account in a bank or institution which provides services in the Republic of Cyprus into which all amounts received from players are deposited for safekeeping and players' funds must be completely segregated from the provider's funds.

Class B services may be provided only through a website using a '.com.cy' domain name. Internet service providers in the Republic of Cyprus are required to have control over all operating websites which offer such services and in particular, they must block access to any unlicensed provider of services falling within Class B or to any other provider of illegal gambling services.

Section IX of the Law lists offences and penalties in relation to gambling. Article 74 makes the provision of gambling services without a licence a criminal offence punishable on conviction by imprisonment for up to five years, a fine of up to €300,000 or both. Under article 78, any person who holds or operates a limited benefit game machine (slot machine) or provides services in the Republic of Cyprus for the operation of such machines is guilty of a felony punishable on conviction by imprisonment for up to five years, a fine of up to €300,000 or both. The same penalties apply for the unlicensed provision of online casino services (article 79). The Gambling Law also prohibits spread betting, dog racing and games of chance and makes it an offence to advertise such activities, punishable on conviction by imprisonment for up to a year, a fine of up to €50,000 or both.

One of the most controversial provisions of the Gambling Law is the prohibition on exchange, or peer to peer, betting contained in article 80. This was introduced at a late stage in the legislative process and is justified by the Cyprus government on the grounds that there is no effective control of the mechanisms for placing bets. In an exchange system the exchange is not providing betting services, but an introduction on a transaction-by-transaction basis to individual providers, who are not licensed and subject to supervision. This facilitates the abuse of the exchange in order to commit economic crime, especially money laundering, contradicting one of the main objectives of the Gambling Law. A small market such as Cyprus is particularly susceptible to abuse due to the limited number of participants.

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revenue and profits from Cyprus, has formally complained to the European Commission that the Gambling Law breaches EU market freedoms and is discriminatory, since it continues to allow the Greek state company OPAP to offer random number games, despite the prohibition on games of chance.

The Cyprus government contends that the restriction on exchange betting and the prohibition of cash betting, which Betfair also complained about, represent a justified and proportionate response to the dangers posed by money-laundering. The prohibition on cash transactions also facilitates regulatory control and makes it more difficult for operators to evade tax by under-recording income. The government maintains that OPAP is not covered by the Gambling Law since it is established under a specific bilateral agreement between Cyprus and Greece, which dates back to 1969.

If the issue between Betfair (and any other operator which believes it is disadvantaged by the Gambling Law) cannot be resolved in any other way the complainants may file proceedings in the Cyprus courts.

Prior to the enactment of the Gambling Law, the Attorney General was requested to provide a Reasoned Report on the proposed law and the government consulted a wide range of interested parties including the European Commission, the United Kingdom and Malta and took their comments into account. It therefore seems unlikely that the Cyprus courts would find cause to overturn the Gambling Law.

The European Commission might attempt to negotiate a compromise but if the Cyprus government maintains its current

stance the only body capable of forcing a change in the law is the European Court of Justice. In previous cases the European Court of Justice has decided that although national legislation which prohibits operators established in other Member States from offering games of chance via the internet restricts the freedom to provide services, the restriction may nevertheless be justified for overriding reasons in the public interest, such as consumer protection, the prevention of fraud and addictive gambling and the general need to maintain public order.

The balancing of all the relevant factors will be a delicate exercise and failing a negotiated solution it is likely to be some considerable time before the issue is resolved. In the meantime there has been an intensification of police activity against illegal gambling in Cyprus. Owners of premises used for illegal gambling have been arrested and equipment has been confiscated. Many online casino operators have ceased operations and owners of premises have terminated leases to betting operators.

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