

Bulgaria

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1. OBJECTIVES AND STRUCTURE OF LEGISLATION

A new Gambling Act was adopted by the Bulgarian Parliament in March 2012 and will enter into force on 30 June 2012. It replaced the currently effective Gambling Act of 1999. The new Gambling Act preserved the basic principles of the regulatory regime of gambling activities which have been applied in Bulgaria since 1993, namely the regulation of an exhaustive list of permitted gambling games, which can be organised by the state-owned or private entities under a special licence (without restrictions on the number of licences or other type of monopolisation). The regulatory authority, which issues licences and supervises the activity of operators, remains the same – the State Commission on Gambling with the Ministry of Finance (the Commission).

The new Gambling Act however introduced certain important changes in the regulatory regime, the main one being the express regulation of online gambling activities. Under the Gambling Act of 1999 online gambling activities were not regulated and thus were considered prohibited. The basic principles of the regulatory regime for land-based and online gambling activities under the Gambling Act are identical. Certain specific rules apply to online gambling as well as to the different types of games.

2. FRAMEWORK OF LEGISLATION

2.1 What is the legal definition of gambling and what falls within this definition?

Under the Gambling Act gambling is defined as 'every game of chance involving a bet, whereupon winning can be obtained or the bet can be lost.'

The Gambling Act expressly exempts from the definition of gambling: 'games of sports or entertaining nature, which requires the participants to manifest deftness, knowledge and skills and which are not predominantly based on chance' and where such games require that participants pay a fee to form an award fund, the same is entirely allocated among participants.'

The Gambling Act further stipulates that the above exemption does not apply to 'remotely organised games' (including online games). The meaning of this legal provision is not clear and it will have to be further clarified by the Commission and the court practices but it seems to imply that in an online environment any game where the participants pay any fee for participation (even if not a bet on a particular game) and may receive a winning (even in the form of an award in a tournament) is to be considered gambling. Therefore, it would appear that online tournaments in any games would qualify as gambling subject to licensing.

2.2 What is the legal definition of online gambling and what falls within this definition?

The Gambling Act does not provide for a definition of online gambling as such but stipulates that any gambling games allowed by the Gambling Act (except for raffles and the momentary lottery games) may be organised 'remotely' via the internet or other electronic means of communication and the Gambling Act refers to such gambling games as 'remotely organised games'. This means that any game organised online or via other electronic communication channels (TV games, SMS games, etc), which meets the general definition of gambling is considered to be remotely organised gambling activity.

2.3 Please set out the different gambling products identified by legislation.

The Gambling Act stipulates that only the type of gambling games exhaustively listed in it may be organised in the territory of Bulgaria (under licence) and lists the following types of allowed games:

- lottery games, which is a general notion including the following types of games: (i) traditional lottery; (ii) raffles; (iii) digital lottery games, which is again a general notion including the following specific types of games: toto, loto, bingo, keno and their variations; (iv) momentary lottery.
- sports betting (including betting on horse and dog races);
- betting on other random events;
- betting related to the knowledge of facts (where the winnings depend on the guessing or giving of a correct answer to a question related to existing facts);
- games with gaming machines; and
- casino games (including roulette, poker and other card games, etc).

2.4 Please list the different requirements for each gambling product, including legal classifications for each?

The Gambling Acts provides for general requirements applicable to all gambling games, such as:

- all gambling games may be performed in the territory of Bulgaria only under a relevant (game specific) licence;
- the Commission issues general rules for each type of game and also approves in the licensing process specific rules for organisation of each operator's games, which should comply with the general rules;
- the organiser of the games must assure the precise accounting of all operations, related to the games;
- the organiser of the games must use only gaming equipment approved by the Commission and produced by a locally licensed manufacturer (this legal provision seems to be incorrectly worded since in originals draft of the new law it stipulated 'produced or imported' by a licensed producer/importer; with the current wording it means that a foreign manufacturer must be licensed to manufacture in Bulgaria in order for

- its equipment to be used locally, which is a nonsense);
- it is prohibited for organisers to provide in any form or manner any loans or credits to players;
- bets and winnings must be paid only in euros or Bulgarian leva. Payment in other currencies are allowed only for casino games subject to specific approval by the Commission;
- organisers must assure payment of winnings within the terms indicated in their approved rules. In respect of land-based games, payments in cash are allowed only up to the equivalent of BGN 5,000 (about EUR 2,500), other winnings must be paid via bank transfer. In respect of online gambling cash payments are not allowed and all payments must be made via electronic transfers to or from a bank account of the organiser.

In addition, the Gambling Act provides for certain specific rules in respect of each of the particular types of games.

2.5 Explain the system of regulation of gambling; which regulatory or governmental body is responsible for supervision of gambling? Which body issues licences?

The main supervisory and regulatory body in the gambling industry is the State Commission on Gambling, which is generally entitled to supervise the activities related to the organisation and offering of games of chance activities as well as over the activities of the producers, importers, distributors and maintenance companies of gambling equipment.

The Commission is an administrative body subordinated to the Minister of Finance. It consists of five members (a Chairman and four members) who are appointed and dismissed by the Minister of Finance.

The Commission is empowered to:

- issue licences for organising of gambling to operators;
- issue licences for production, import, distribution or maintenance of gambling equipment;
- issue obligatory general rules and requirements in respect of the organising of gambling and the different types of games, such as requirements about the premises where they are run, to the accounting systems of operators, staff of operators, technical requirements and specifications of gaming equipment, control systems, etc;
- approve the rules of the games applied by each licensed operator as well as the rules and systems for formation and distribution of the winnings;
- approve the gambling equipment or gaming software that may be produced or imported and distributed in Bulgaria (after prior testing and certification of those by laboratories authorised by the Commission for that purpose);
- approve the form of the tickets, talons and other documents by which participation in the game of chance is made or evidenced;
- supervises and controls the gambling activities and equipment in the territory of Bulgaria and imposes sanctions for established violations.

3. ONLINE GAMBLING

3.1 To what extent can online gambling be offered in your jurisdiction? Are licences available and if so, for which gambling products. Please describe briefly the licensing process, who may apply, whether licences are limited in number, and, if no licences are available, whether it is legal for online gambling to be offered. In the case of EU jurisdictions, please state whether there are any issues as to the legality of the local law at EU level. Please refer to any relevant cases at ECJ level and explain any measures taken by the European Commission.

Under the Gambling Act, the online gambling operations are defined as a specific type of gambling operations, which may be performed in the territory of Bulgaria under a special licence. Online gambling (gambling organised via the internet) is regulated as one of the possible forms of 'remotely organised' gambling (the other form being the gambling organised via other electronic communication channels (TV games, SMS games, etc).

Any gambling games allowed by the Gambling Act (see question 2.3 above) except for raffles and momentary lottery games may be organised online pursuant to a licence.

There are no restrictions as to the number of licences and the licensing process is generally the same as for land-based gambling, subject to certain specific requirements as described below.

In addition to general requirements for applicants for a licence (see question 4.1 below), applicants for online gambling must comply with the following specific requirements:

- An applicant or his partners or shareholders must not have been subject to a sanction for non-compliance with the Gambling Act or the repealed Gambling Act of 1999 for five years before the date of application.
- The communication equipment and the central point, accommodating the central computer system of the applicant must be within the territory of the Republic of Bulgaria or in the territory of another member state of the EEA or the Swiss Confederation.
- For the purposes of making bets and payment of winnings a bank account shall be opened with a bank licensed in the Republic of Bulgaria or in another member state of the EEA or the Swiss Confederation, which operates in the territory of Bulgaria (based on the freedom of establishment or freedom to provide services principles).
- The central computer system of the organiser shall be equipped with a system for registration and identification of participants in the games, as well a system for storage and real time submission to the National Revenue Agency of information about the simultaneous gaming sessions, the bet made by, and the winnings paid to each participant. Such central system must assure online registration of each transaction in the system of the National Revenue Agency under terms and conditions to be specified in a special ordinance.
- The applicant must assure the safekeeping of all data related to the operations in Bulgaria, including registration and identification of participants, the bets made and winnings paid, on a dedicated control

server located in the territory of Bulgaria under terms and conditions to be specified in a special ordinance. Local data shall be kept for a period of at least 10 years after January 1 of the calendar year to which the data refers.

- The gambling software, as well as any new version of the software shall be approved by the Commission under terms and conditions to be specified in a special ordinance.

It should be noted that the adoption of the new Gambling Act was a long process (first drafts were published by the government in 2010) and involved a number of revised proposals. Some original proposals involved excessively restrictive rules particularly in respect of online operators such as maintaining local physical offices, having five-year local experience as a licensed land-based operator, local location of all equipment used for the games, maintaining a bank account with a local bank, etc. The draft law was submitted to the European Commission in March 2012 and the Commission issued a detailed opinion criticising the proposals and extending the standstill period for the new legislation. The Bulgarian Government responded with significant changes to the draft law removing or modifying most of the problematic provisions and the current wording of the law is generally accepted to be compliant with EU law. However, a number of secondary level regulations on the implementation of the law will have to be adopted to detail various technical terms and conditions particularly relevant for online operations. Those will have to be separately scrutinised for compliance with EU law.

3.2 Is there a distinction between the law applicable between B2B operations and B2C operations?

The Gambling Act does not make a distinction between B2B and B2C operations. The Gambling Act requires a licence for the 'organiser' of the gambling activities. The law does not provide for a definition of the term 'organiser'. When listing the requirements for a licence, the Gambling Act requires that the organiser maintains a bank account for receiving of bets and payment of winnings and maintains 'its own' communication equipment for executing the games. Thus apparently legal rules were worded in a view of classic B2C operations where one and the same entity is contracting with clients and running the systems. Therefore, in cases of B2B operations where one entity is contracting with clients and another entity is the owner and/or operator of the systems, certain legal issues might arise and it may be argued whether and what type of B2B operations would be allowed under local law. A strict interpretation of the wording of the law about 'organiser's communication equipment' may lead to a conclusion that arrangements where the operator is not the owner of the systems and equipment are not allowed. A more flexible approach would allow systems to be used under contractual arrangement even if not owned by the organiser. It is to be seen what interpretation the Commission would implement in its future practice on the new law.

3.3 What are the consequences for B2C or B2B operators who are active in your jurisdiction without having obtained or applied for the required permits, licences and approvals?

Operators who are active in Bulgaria without the required licence shall be subject to a number of sanctions.

An administrative penalty (a fine) may be imposed on such operators as follows:

- up to BGN 200,000 (EUR 102,000) in the general case;
- up to BGN 1,000,000 (EUR 511,000) if the incomes from the unlicensed activities exceed BGN 1,000,000;
- up to BGN 5,000,000 (EUR 2,556,000) if the incomes from the unlicensed activities exceed BGN 5,000,000;

The new Gambling Act also provides for detailed rules in respect of confiscation of assets of illegal operators as follows:

- Gaming equipment and communication equipment, which is used for organisation or performance of gambling operations without a licence shall be expropriated in favour of the state, irrespective of its ownership.
- All monetary funds obtained by persons organising or carrying out gambling games without a licence shall be expropriated in favour of the state. If the funds are missing, the person who has obtained/earned them shall owe their money equivalent.
- All available cash, discovered upon establishment of the violation shall be deemed obtained/earned in or on the occasion of organising or performing gambling games without a licence and shall be expropriated in favour of the state.

Under the Gambling Act a licence may not be granted to a company if the company or a person related to the company has been sanctioned for unlicensed gambling activities or have been a shareholder in such a company. The rule is quite wide and it does not set any time limit between the date of application and the date of the sanctions imposed (ie once a sanction for unlicensed gambling is imposed on a company it may not apply for a licence in Bulgaria ever). Such rule is controversial to the extent that it contradicts the basic principle of law in Bulgaria for removal of the negative consequences of administrative or criminal sanctions after certain periods of time (the so-called concept of rehabilitation).

The Gambling Act also provides a power for the Commission to identify and publish on its official website a list of websites offering gambling in Bulgaria without a licence. If the operator of such a website does not cease the breach of the law within three days, the Commission may request the court to order the filtering of and restrict access to the website. The order of the court is published on the website of the Commission and all providers of public electronic networks or services are obliged to block access to such a website within 24 hours. A fine of up to BGN 30,000 (BGN 60,000 in case of repeated breach) may be imposed on providers who do not comply with the order for blocking access within the time limit.

It should be taken into account also that the organising of gambling operations without a licence is a criminal offence punishable with

imprisonment of up to six years in the general case and up to eight years in cases of gross offences, repeated offences or cases involving sports betting.

It should be further considered that the Gambling Act expressly prohibits any person from installing or use gambling equipment (including communication equipment for online gambling) or from accepting bets or paying winnings or in any other way supporting or intermediating the de facto performance of gambling operations without a licence. The wording is quite general and raises a question as to whether local banks, money transfer, credit cards and payment systems operators through which payments are made can be held liable. Local companies providing IT support, customer support or software development for unlicensed online gambling organisers would be also caught by the prohibition. A fine of up to BGN 30,000 may be imposed for breach of such a prohibition.

Fines may be also imposed on companies publishing advertising messages from unlicensed gambling games (advertising of gambling is generally prohibited under the new Gambling Act with certain exceptions allowed only in respect of games from duly licensed operators). The fine is in the range of up to BGN 30,000 (EUR 15,300).

3.4 Has the legal status of online gambling changed significantly in recent years, and if so how?

Online gambling has been regulated for the first time in the new Gambling Act adopted in March 2012. Under the repealed Gambling Act of 1999, online gambling had not been regulated and following the principle that only the types of gambling expressly regulated by the law are allowed under licence, it was considered that online gambling was prohibited.

3.5 Whilst acknowledging the inherent difficulty in predicting developments in gambling law, what are the likely developments in online gambling in your jurisdiction, both short term and long term? Are any specific amendments under consideration? Have there been any recent political developments, or do you envisage any in the near future? Are any specific amendments under consideration? Are they likely to be adopted and what is the time scale?

The Gambling Act was recently adopted in March 2012 and will enter into force on 30 June 2012. The new law introduces significant changes compared to the legal regime under the repealed Gambling Act of 1999, the major change being the express regulation of online gambling. A number of secondary level regulations must be adopted by the Council of Ministers and various Ministers on the implementation of the new law by end of June 2012. Certain unclear or controversial wording of the new law will have to be interpreted and applied by the Commission in its practice. Therefore, a lot of legal updates and developments are expected in the short term.

3.6 Is the law the same in relation to mobile gambling and interactive gambling on television? If not, are there any headline differences?

Mobile gambling and interactive gambling on television are defined jointly

with online gambling as 'remotely organised' gambling activities and are subject to the same regulatory rules.

4. LAND-BASED GAMING

4.1 Please describe the licensing regime (if any) for land based gaming, and what products are included. Please set out what licences are available, and the licensing regime for them.

Licences

Gambling operations may be performed in Bulgaria only after the issuance of a licence by the Commission.

The licence indicates the legal name and other corporate details of the organiser as well as the names of its statutory representatives.

The licence is game-specific and it indicates expressly the game of chance for which the applicant is licensed and the terms and conditions under which the game will be organised/performed.

The licence also indicates expressly the addresses of the premises where the games are organised or the addresses of the central office of the organiser and the offices for acceptance of bets and payment of winnings. In respect of online operators, the licence indicates the internet address of the website through which the games are organised. There is no express legal requirement for a separate licence to be issued for each separate casino or gaming hall operated by one and the same operator (ie it is not prohibited for one licence to be issued to an operator for several slot halls or casinos). However, the constant practice of the Commission under similar rules of the abolished Gambling Act of 1999 has been to issue a separate licence for each separate casino or gaming hall even if they are operated by the same entity and are located in the same town or village.

The licence also indicates expressly the name, type, manufacturing number and number of permitted participants and jackpot system(s) of the land-based gambling equipment or online gambling equipment.

Any change to the above details is allowed only after an appropriate change of the licence is obtained pursuant to a special procedure.

A licence is also required for the manufacture, import or distribution and/or maintenance of physical gambling equipment.

In, addition, all gambling equipment which is to be used in Bulgaria as well as gambling software to be used by a licensed online operator are subject to a procedure for approval by the Commission based on testing in authorised laboratories in Bulgaria or in another country which is a member of the EEA or the Swiss Confederation (under terms and conditions to be established by a special regulation).

The licence may not be transferred. Special rules apply in the case of corporate reorganisation of the legal entity of the licensee. Generally a transfer to a new company in case of a spin-off or a merger is allowed only if the recipient entity is already a licensed gambling operator (even if for another type of gambling).

The licence term is in general five years. Extended terms of up to 10 years are possible against a higher requirement for investments (see below). The

licence may be renewed for the same term upon a request by the licensee filed not later than two months before the expiry of the original term subject to the licensee meeting the requirements for issuance of a licence and the absence of administrative penalties or compulsory measures issued by the Commission for breach of regulatory requirements during the original term.

Licensees

Gambling licences may be issued to:

- Bulgarian companies or companies registered in another member state of the EEA;
- Bulgarian sole traders (individuals who are registered as merchants with the Commercial Registry) – only for operation of gaming machines and for activities of production, import or maintenance of gambling equipment;
- the Bulgarian state; and
- Bulgarian or EEA member country not-for-profit organisations (only for momentary lotteries and raffles).

Pursuant to the Gambling Act, foreign persons (ie persons other than companies or individuals registered in or citizens of an EEA member country or the Swiss Confederation) may not have any interest in a locally licensed company unless they have invested in other activities in Bulgaria at least BGN 10 million (about EUR 5.1 million) and have created more than 500 jobs or unless they own a hotel of four stars or more and operate a casino in it. This provision is controversial as worded to the extent that it may prohibit large European operators with international shareholding bases (particularly listed companies) to apply directly for a local licence because any non-EEA (or Swiss) shareholding in a licensed company is prohibited.

Requirements for obtaining a licence

In order to obtain a licence an applicant must prove the origin of the funds for the performance of the licensed activity and must prove that, he or any of his shareholders with qualified participation or a member of a managing or supervisory body:

- have not been convicted of a crime of a general nature, unless rehabilitated;
- have not been declared insolvent, if an unsatisfied creditor has remained and if less than three years have been passed after the date of declaration of the insolvency;
- have not been sentenced for crimes against the financial, tax or social security systems and do not have overdue public liabilities exceeding BGN 5,000, or if they have such, a proper guarantee has been provided for those;
- have not been sanctioned by cancellation of a gambling licence in another country member of the EEA or the Swiss Confederation and have not had imposed on them sanctions for performing gambling activities without a licence.

The applicant must also prove that none of its shareholders or a person

related to a shareholder is an unincorporated company or a company registered in an offshore zone. This provision is controversial in two respects. It does not refer to qualified participation, ie any interest (even if insignificant) in the shareholding of the applicant by abovementioned entities would prevent the issuance of a licence. In addition, the Gambling Act does not provide for a definition of either 'offshore zone' or 'unincorporated company' (the latter term has certain specific meaning under Bulgarian law but it is not clear how it will be applied to foreign jurisdictions). Thus it remains unclear at this stage how this rule will be interpreted and applied by the regulatory authorities.

Upon a positive decision by the Commission for the issuance of a licence, the applicant may start performing the licensed activities only after obtaining a special certificate from the Commission confirming the licence's effectiveness.

In order to obtain such a certificate the licensee must prove to the Commission within six months that he has invested certain amounts in activities or assets related to the licensed operations and that he has available funds for the performance of the licensed activities. The investments mentioned above must be made in the territory of Bulgaria or in another country which is a member of the EEA or the Swiss Confederation.

The amount of required investment varies, depending on the type of gambling operation for which a licence is obtained, as follows: BGN 1 million (about EUR 510,000) for sports betting, betting on other events, traditional lottery, toto and loto; BGN 600,000 (about EUR 305,000) for casino games and online gambling; and BGN 100,000 (about EUR 51,000) for raffles, momentary lotteries, bingo and keno games and gaming machines.

Similarly, the requirement for available funds varies as follows: BGN 1 million (about EUR 510,000) for sports betting, betting on other events, traditional lottery, toto and loto and online gambling; BGN 600,000 (about EUR 305,000) for casino games; and BGN 200,000 (about EUR 102,000) for raffles, momentary lotteries, bingo and keno games and gaming machines.

If an applicant wishes to benefit from the extended term of a licence of up to 10 years, the amount of investment required is increased as follows: BGN 10 million (about EUR 5.1 million) for sports betting, betting on other events, traditional lottery, toto and loto; BGN 2 million (about EUR one million) for casino games and online gambling; and BGN 400,000 (about EUR 205,000) for raffles, momentary lotteries, bingo and keno games and gaming machines.

Procedures and fees

A licence is issued upon application with attached documents proving compliance with the legal requirements for issuance of a licence. If the applicant already holds a gambling licence issued by a competent authority in another member state of the EEA or the Swiss Confederation, under certain terms and conditions the circumstances which are mandatory for the issuance of such a licence may be considered as proved in the local application

procedure without presentation of specific documentation to that effect.

A decision of the Commission on the application must be taken within 60 days (with a possibility for a 30-day extension in the case of extraordinarily complicated legal or factual circumstances to be reviewed in the particular case). If the Commission requests additional documents or information in support of the application the deadline for taking a decision is prolonged with the period until submission of such additional information.

Upon the taking of a positive decision for issuance of a licence by the Commission (taken by the majority vote of the Commission's members) the applicant is given up to six months to prove that the required investments have been made and funds made available. Upon presentation of such evidence the Commission must take within 30 days a decision for issuance of a licence certificate. The licence certificate is issued by the Chairman of the Commission within two business days after entry into force of the above decision. The effective gambling operations are allowed only after issuance of the licence certificate.

A fee is paid upon filing of an application for a licence (fee is not reimbursable if the application is rejected). The amount of the fee depends on the type of game for which the application is made. Under the Gambling Act of 1999 the fee ranges between BGN 2,000 (EUR 1,000) for raffle and BGN 35,000 (about EUR 17,800) for casino games. A new tariff of fees will have to be adopted pursuant to the new Gambling Act. While it is not expected that the range of fees for land-based games will be changed substantially under the new Gambling Act, it is not clear at this stage what would be the fee for online gambling applications to the extent such were not possible under the Gambling Act of 1999.

A separate fee is payable for the issuance of the licence where the application has a positive outcome. The amount of the fee depends on the type of game for which the licence is issued as well as on the number of games and/or machines that will be offered. Under the Gambling Act of 1999 the fee ranges between BGN 5,000 (about EUR 2,500) for raffles and BGN 35,000 (about EUR 17,800) for casinos with up to 10 tables plus BGN 2,000 for each additional table. A new tariff of fees will have to be adopted pursuant to the new Gambling Act and as mentioned, there is no indication at this stage what the fee would be for online gambling licences because they were not possible under the Gambling Act of 1999.

Fees in lower amounts are also payable for approval of gambling equipment or gaming rules of licensed organisers as well as for approval of changes to the terms of an issued licence.

4.2 Please set out any particular limitations or requirements for (eg casino) operators, such as a ban on local residents gambling.

Gambling operators must ensure that only individuals of full legal age (above 18 in Bulgaria) and not incapacitated may participate in gambling games.

Gaming halls and casinos must be located at a distance of more than 300 meters from schools and orphanages. Intoxicated individuals, individuals without identity documents, individuals in uniform or armed (unless on

duty) must not be allowed to enter gaming halls or casinos.

No gambling operations may be held in buildings, which are public state or municipal property as well as in buildings used by the public administration and educational or health care organisations.

5. TAX

5.1 Please summarise briefly the tax regime applicable to both land-based and online gaming.

Currently local tax laws regulate only land-based operations and online gambling has not been regulated so far. Therefore, taxation regime for online operators is to be further clarified.

In respect of land-based gambling, the local Corporate Income Tax Act provides for two types of taxation regime of operators:

- In respect of all games other than casino games, gaming machines operations and betting on horse and dog races, a one-off tax in the amount of 15 per cent is levied over the amount of bets placed. In respect of games where participation is made through tickets, coupons or other instruments, the tax is levied over the nominal amount of bets indicated in all such instruments upon their printing or import in Bulgaria. The tax paid for unused instruments may be refunded against delivery of unused instruments to the tax authorities. In respect of SMS games or games played over the phone, the taxable base is only the excess value of the SMS or call exceeding the normal price for the telecommunication service.
- In respect of casino games, gaming machines operations and betting on horse and dog races, the tax is determined as a particular amount payable quarterly for each piece of gambling equipment or a single player's account available on such equipment. Amounts are: BGN 22,000 (about EUR 11,200) per roulette table; BGN 5,000 (EUR 2,550) per another piece of equipment in a casino; and BGN 500 (EUR 250) per gaming machine or a piece of equipment for placing bets on horse or dog races.

At a personal level, under the Individuals Incomes Tax Act, winnings from gambling games are exempted from local taxation.

6. ADVERTISING

6.1 To what extent is the advertising of gambling permitted in your jurisdiction?

The Gambling Act prohibits the 'direct advertising' of gambling including unsolicited electronic messages containing information about gambling. Direct advertising is a defined term and means 'information distributed in any form and with any means whatsoever, which directly invites customers to take part in gambling games, including by creating the impression that by participating in the game the consumers may solve personal or financial problems or achieve wellbeing or by inviting the citizens to participate in the game with promises of big winnings'.

The announcement of the name of the games, the registered trade mark

of the organiser, the holding of the drawings, the results of the games and the winnings paid are not considered direct advertising and are expressly allowed. The law expressly prohibits media companies from publishing or distributing any information about gambling games other than the above listed. When signing contracts for publication or distribution of such information, media operators are obliged to request evidence that the respective gambling operator is duly licensed. Breach of the above obligations may result in a fine of up to BGN 30,000 (about EUR 15,100) for media operators.

The law also expressly allows licensed operators to sponsor events supporting sports, culture, health services, education and social welfare.

The Gambling Act further stipulates that the National Ethical Standards for Advertising and Commercial Communication in Bulgaria (adopted by a special self-regulatory body of the advertising industry in Bulgaria - the National Council for Self-regulation) must adopt special rules in respect of gambling advertising, which shall be mandatory for all media operators.

7. SOCIAL GAMING

7.1 We believe this to be a growing area. Please decide under what criteria social gaming is permitted in your jurisdiction. If games are free to play, or if there is no prize are they legal, without a licence? Please address circumstances where virtual currency is used and can be won: ie, currency which is of no monetary or other value, save for as credits to take part in games. The answer should address the question whether game credits or virtual money can be exchanged for other prizes.

Any games that do not meet the general definition of gambling (including payment of a bet or entry fee and possibility to win a prize based on chance) should not be subject to regulation by the Gambling Act and there are no special regulations in respect of organising those.

As mentioned in question 2.1 above, the Gambling Act expressly stipulates that (even if the general definition is covered) entertainment or sports games, which require skill, agility or knowledge and which are not predominantly based on chance shall not be considered to be gambling games. If an entry fee is required for the purposes of forming an award fund for such games, such award fund must be entirely distributed among the participants in order for the game to benefit from the exemption. The Gambling Act further stipulates that such rules do not apply to 'remotely organised games' (including online games).

The meaning of the exemption and the stipulation that it does not apply to online games is not clear. The adding of the condition for entry fees forming an award fund to be entirely allocated among participants for the exemption to apply is controversial to the extent that if the game is not predominantly based on chance but on skill it should not be regarded as gambling under the general definition. Otherwise, it may turn out that any sports event or computer game tournament requiring payment of entry fees, but which distribute only part of those among the participants (after

covering costs and margins of organisers) may qualify as gambling to the extent that even if results of games are predominantly dependent on skill, the element of chance is always playing a role. Therefore, the application of this rule to entertainment or sports events and particularly online social games will have to be further clarified by official guidance from the Commission and court practices.

The above uncertainty however is relevant only for games which require payment for participation and involve the possibility of winning a monetary prize. If any of those elements is missing, ie if games are free to play or there are no winnings awarded to participants, they would not be subject to the gambling law rules. Same would apply if games involve use of virtual currency and winnings in such a virtual currency are awarded to participants to the extent that such virtual currency has no monetary value and may only be used as credits to take part in more games.

If, however, credits or virtual currency may be exchanged for other prizes (cash or objects other than objects with immaterial value) the above rules will have to be considered (in the way they will be applied by the Commission).