

GAMING LEGALNEWS

BULGARIA ADOPTS NEW GAMBLING TAX REGIME

by Nadya Hambach, LL.M (Velchev & Co.)

Bulgaria has a new gambling taxation regime effective January 1, 2014, which, together with the reasonable and balanced regulations currently in place, makes the country attractive for local licensing and gambling operations based upon a low corporate tax and highly qualified and low-priced technical specialists. One and a half years after the Gambling Act ("Act") was introduced, the tax base for gambling has been changed and is now in line with good business practices: switching from a turnover base to a Gross Gaming Revenue ("GGR") base.

On December 19, 2013, amendments in the Act ("Amendments") for liberalizing gambling regulation in Bulgaria passed successfully the second reading in the Bulgarian Parliament amidst tense disputes. The Amendments were promulgated in the National Gazette on January 3, 2014, and came into force effective January 1, 2014.

The Amendments assure that as of January 1, 2014, the taxation of **any online games** in Bulgaria will be based on GGR with a 20% tax rate. For games in which fees and commissions are collected (such as poker), the tax rate will be 20% of the collected fees. In addition, there is a single fee for issuing and maintenance of a five-year license in the amount of approximately EUR 50,000 (BGL 100,000). No annual fee will be required during the five years' validity of the license.

Offline bingo and keno will be taxed at a 10% corporate tax rate.

The GGR-based taxation is not a part of the common tax system, but rather it is an administrative fee regulated entirely in the Act instead of the tax laws. Nevertheless, any operator who decides to have an establishment in Bulgaria can take advantage of a favorable and stable corporate tax – only 10%. The low corporate tax rate would apply only to operators who decide to establish a local company in Bulgaria, which might be strongly supported from other economic arguments – for example, a very well-educated and qualified labor force at insignificant costs.

The Amendments introduce a new requirement for any licensed operator not established in Bulgaria but established in any other EU/EEA country or Switzerland. Such operators must have an authorized representative in Bulgaria, but this would not constitute having a local business in the country for purposes of obtaining the 10% corporate tax rate. An operator, in all events, is required to have a local representative in Bulgaria, who should be authorized for representation before Bulgarian authorities and courts.

From a regulatory perspective, the Bulgarian gaming regime is now one of the most balanced in Europe. It does not require a local



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establishment and main server in Bulgaria for any foreign operator who decides to obtain a local Bulgarian license (nevertheless, a local control server in Bulgaria is required). There are no specific requirements for performing payments through a local bank or to make certain investments in the country. The operators are not required to operate a dot bg domain. Foreign operators – registered, investing, and having a main server anywhere within EU, EEA, and Switzerland – can apply for a license. Nevertheless, the restrictions the Act imposes on an applicant whose shareholder is an offshore company should be carefully considered in light of provisions of the Act relating to economic and financial relations with companies registered in preferential tax regime jurisdictions and their actual shareholders.

A significant number of online gambling operators are expected to apply for a license in Bulgaria. The first online operators have already submitted applications. They are eager to enjoy not only reasonable taxation but also liberal regulation. The Bulgarian government has further stimulated the licensing of online operators by approving amendments that allow the operator to be removed from the blacklist even before being granted a license if the online operator applies for such removal not later than March 31, 2014.

The Amendments also permit the operators to perform any other business activity apart from organized gambling, which was not the case until now.

The efforts of the Bulgarian Parliament are of major significance. Instead of concentrating on blocking measures (such as ISP and/or payment blocking), the government has focused on best practices and introduced regulations that motivate the online gambling operators to get a license and work not only in a balanced regulatory environment but also under a favorable tax regime. These changes are aimed at balancing and optimizing the new sector regulation model that was introduced back in 2012. They give the online operators promising conditions to work legally in the Bulgarian market. At the same time, the new regulations impose stricter administrative sanctions on illegal online gambling operations.

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THE HUALAPAI GRAND CANYON DISPUTES CONTINUE

by Patrick Sullivan

The Hualapai (pronounced *wal-lah-pie*) Tribe has about 2,300 members, 1,300 of whom live on the Tribe's northwest Arizona reservation. The enormous reservation borders the Colorado River and includes portions of the West Rim of the Grand Canyon where the Tribe operates a tourist destination called Grand Canyon West. The Tribe is now defending multiple lawsuits from non-Indian developers including the developers of the Grand Canyon Skywalk, a horseshoe-shaped glass bridge that protrudes about 70 feet from the canyon rim and allows

visitors to walk over the 4,000-foot canyon, and the developers of the Hualapai Ranch theme park and cabins at Grand Canyon West.

Grand Canyon Skywalk Dispute

The Grand Canyon Skywalk was the vision of David Jin, a tourism entrepreneur who had been operating a van service to the canyon. Jin founded Grand Canyon Skywalk Development ("GCSD") and began working with a Hualapai tribal corporation, 'Sa' Nyu Wa Inc. ("SNW"), in 2003. According to a development agreement, GCSD and SNW would share revenue from tickets and merchandise equally. The Grand Canyon Skywalk opened in 2007 and was a huge success. In addition to generating revenue through ticket sales, the Skywalk's opening brought more visitors to Grand Canyon West and significantly increased revenues to Hualapai Ranch.

Despite the success of the Skywalk, the Tribe's relationship with Jin soon deteriorated when SNW withheld millions of dollars in management fees from GCSD claiming that Jin had failed to complete construction of the Skywalk Visitor's Center. The Skywalk development agreement contained a waiver of sovereign immunity for the limited purpose of mandatory arbitration. When GCSD sued SNW in Hualapai Tribal Court for the withheld fees, Hualapai Judge Ida Wilber dismissed the suit and referred the matter to arbitration.

In February 2012, while arbitration proceedings were pending, the Hualapai Tribe seized GCSD's interest in the Skywalk through an "eminent domain" action filed in the Hualapai Tribal Court. The Tribe then claimed ownership of GCSD's claims in the arbitration and dismissed GCSD's demand for arbitration with prejudice. GCSD objected to the dismissal, and the arbitration proceeded. In August 2012, the panel awarded GCSD \$28.6 million for unpaid management fees and attorneys' fees.

GCSD also sued the Tribe in federal district court in Arizona seeking a declaratory judgment that the Hualapai Tribe lacked the authority to condemn its intangible property rights and for injunctive relief. The district court dismissed, requiring GCSD to exhaust all possible tribal court remedies before proceeding in federal court. In April 2013, the Ninth Circuit affirmed, holding that the bad faith and futility exceptions to the exhaustion requirement did not apply as there was no evidence of bad faith by the Hualapai Tribal Court itself.

In February 2013, an Arizona federal court confirmed GCSD's \$28.6 million arbitration award. SNW promptly appealed the confirmation to the Ninth Circuit and declared bankruptcy. The Ninth Circuit proceedings are currently stayed by the bankruptcy proceedings in the Bankruptcy Court for the District of Arizona.

On June 13, 2013, Jin passed away at the age of 51 from a long battle with cancer. GCSD has stated that it will continue its legal battle with the Tribe. In December 2013, the Supreme Court denied GCSD's petition for *certiorari*, meaning that GCSD will have to exhaust its appeals in Hualapai tribal court before returning to federal court to challenge the Tribe's condemnation of the Skywalk contract.

Hualapai Ranch Dispute

In 2005, tribally owned Grand Canyon Resort Corporation (“GCRC”) entered an agreement with Jim Brown to develop and manage Western Town, an Old West attraction offering horseback rides and cowboy-themed games. According to his complaint, Brown invested \$485,000 to build Western Town on Hualapai land in exchange for management rights and profit-sharing rights until 2017. In 2006, GCRC and Brown entered a separate contract under which Brown invested \$545,000 to construct 40 cabins to accommodate visitors to Grand Canyon West. Western Town and the cabins were rebranded as Hualapai Ranch.

However, over the next few years, the relationship between Brown and the Tribe fell apart. The GCRC Board replaced the CEO that had negotiated the Hualapai Ranch deals with a succession of executives, and eventually the Hualapai Tribal Council terminated the entire GCRC board and took over its duties. In 2010, the Tribe approached Brown about combining the 2005 Western Town and 2006 lodging contracts into a single contract that omitted the arbitration and waiver of tribal sovereign immunity provisions contained in the previous contracts. Brown claims that when he expressed his hesitation, GCRC told him that they were under political pressure to remove the provisions due to the Skywalk litigation with Jin and “expressly promised that GCRC would not claim sovereign immunity in the event of a dispute.”

Brown and GCRC executed the new combined agreement without the arbitration provisions and sovereign immunity waiver later in 2010. Brown’s complaint alleges the Tribe simultaneously pressured Jin into a new contract without arbitration and an immunity waiver, demonstrating an “an active conspiracy and plan to deprive non-Tribal investors of contract rights” due to dislike for the Tribe’s non-tribal business partners among certain tribal council members. When Brown refused to sign a press release criticizing David Jin, the Tribe allegedly told him that “you’re either on our team or not” and began to manufacture reasons to terminate the Hualapai Ranch agreements.

In May 2012, GCRC “condemned” a building at Hualapai Ranch and claimed that Brown embezzled money from the operation with payments to fictitious vendors. By the end of 2012, communications had ceased, and at a meeting in December, the Tribe hand delivered a “Notice of Events of Default and Termination” to Brown alleging that he had defaulted by failing to install and repair certain infrastructure that Brown claims was the responsibility of the Tribe and demanding that Brown cure the default within 30 days through what Brown called “vague, ambiguous, overly burdensome, and cost preventative” actions that rendered performance impossible. Brown’s attempts to contact the Tribe to cure the alleged default were subsequently ignored.

In February 2013, the Tribe terminated Brown’s agreement and took over the operations, but it allegedly failed to make any repairs to the “condemned” structure that had purportedly been deemed unsafe.

This month, Brown filed suit in the Hualapai tribal court requesting the Court compel the Tribe to arbitration pursuant to the Agreement, requesting an accounting, and alleging breach of contract, breach of good faith and fair dealing, and unjust enrichment. Brown also

accused GCRC and the Tribe of fraud by inducing him to abandon his sovereign immunity waiver with a false promise that GCRC would not use sovereign immunity as a defense to Brown’s claims.

Conclusion

The Skywalk and Hualapai Ranch disputes demonstrate the importance of obtaining – and maintaining – tribal sovereign immunity waiver and forum selection clauses as well as the need for fair and honest dealing by all parties to contracts. While Indian Country offers many lucrative opportunities, the stakes can be high, and this fact underscores the need for comprehensive and enforceable contracting.

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