Information on the impact of the draft of the Brexit Act on gambling operators, authorized persons and banks providing bank guarantees

On 7th January, 2019, the Government of the Czech Republic approved the bill on regulation of certain relations in connection with **the exit** of the United Kingdom of Great Britain and Northern Ireland from the European Union **without an agreement on the exit before 29th March 2019, the so-called Brexit Act** (hereinafter referred to as the "Act"), which will be further discussed by the Chamber of Deputies of the Czech Republic.

Affected regulations:

- Section 1 par. 1, point r) and par. 2 of the Act – general application of the Act
- Section 12 par. 1 of the Act – Income Tax
- Section 28 of the Act – regulation of roles of the gambling operator and the authorized person
- Section 29 par. 1, point g) of the Act – transitional provisions for initiated proceedings
- Section 30 of the Act – effectiveness

The Act regulates, besides other things, **activities of British entities based in the United Kingdom and in the territories specified in Article 355 of the Treaty on the Functioning of the European Union**, such as Gibraltar, in the field of gambling, which are:

1. gambling operators under Act No. 186/2016 on gambling (hereinafter referred to as the "GA"); and
2. authorized persons for professional assessment and certification under the GA

for a transitional period (**30th March 2019 to 31st December 2020**). The law regulates the preferred use of the proposed Act for the listed relations. This means that the terms and procedures set forth in this Act have precedence over the terms and procedures set forth in "general" acts. This Act will not be applicable to relations not regulated in the Act, and these will follow the "common" arrangement represented by the law of the Czech Republic.

The entry into force of the Act is proposed to be **the day when the United Kingdom leaves the EU without an agreement**. The Ministry of the Interior will publish this day in the Legal Code. **Validity is then limited by the moment the Agreement on Exit enters into force, or by 31st December 2020**. The day the Agreement on Exit enters into force will also be published by the Ministry of the Interior in the Legal Code. If the Agreement on the terms of the exit was concluded before the UK leaves the EU, this Act will not enter into force.

Ad 1) Gambling Operators

These are the holders of basic licence for the operation of gambling according to the GA granted before the Act entered into force, and a person who reported a gambling game according to the GA before this Act entered into force, when, for the purposes of the GA, these persons are **considered persons that have the registered office in another Member State of the European Union**.

Ad 2) Authorized persons for professional assessment and certification

These are persons who were granted the licence for the expert assessment and certification under the GA before the Act entered into force, when, for the purposes of the GA, these persons are **considered persons that have the registered office in another Member State of the European Union**.

The above-mentioned applies also within a proceeding that had been initiated before this Act entered into force and had not been finally terminated by the day of the Act's entry into force. **Administrative proceedings initiated before the Act entered into force will be completed according to the existing legislation**, which means that such a legal person may be granted the basic licence or the decision on the authorization.

Income Tax

An income taxpayer that is a UK resident taxpayer **is considered a tax resident of a Member State of the European Union** for tax purposes for the taxable period, in which this Act became effective. The goal of this regulation is to ensure that two different tax treatments do not apply to a certain taxpayer's tax obligations within this tax period.

Banks providing bank guarantees for the purpose of paying deposits

Regarding the provision of bank guarantees by banks with registered offices in another EU or EEA Member State, or banks, whose branches are based in the EU or EEA, **these bank guarantees will no longer be accepted by the MoF**. This fact will affect both the applicant for the basic licence and the holder of the basic licence.

Within the administrative procedure, **the applicant** will have to submit a new bank guarantee meeting a statutory criterion, or to choose the second way of paying a deposit, that is into the MoF account. Until then, the applicant cannot be granted the basic licence as they do not meet one of the basic conditions for the decision grant.

The holder of the basic licence, or rather the gambling operator, should be invited by the MoF, in accordance with Section 95 par.1 of the GA, to meet the condition for granting a license, which consists in proving the payment of the deposit in accordance with the GA; this means the issuance of the new warranty card by a bank based in the EU and EEA or by a branch of a bank that has its registered office in the EU and EEA. The second option is to pay the deposit into the MoF account. A reasonable time limit will be set for the applicant. If the meeting of the condition of the deposit payment is not proved within the stated time limit, the MoF will initiate of its own motion an administrative proceeding for the cancellation of the basic license due to failure to meet the condition for the basic license granting. [1]

Impact on the operator of gambling games and the authorized persons after 31st December 2020 without the agreement on exit

The Ministry of Finance shall initiate of its own motion an administrative proceeding for the cancellation of the basic licence or of the decision on the authorization pursuant to Section 95 of the GA (basic licence) and Section 111 of the GA (decision on the authorization) due to failure to meet the condition stipulated for the issuance of the decision.

Final summary

- **The gambling operator and the authorized person** based in the United Kingdom and associated territories will **be considered a person that has the registered office in the EU** after

[1] The above statement is confirmed by the Explanatory Memorandum to the Act: "Because of the exit from the European Union**, the recoverability of such a bank guarantee will not be guaranteed,** thus it can no longer be accepted. Both the applicant and the gaming operator **will therefore have to provide the deposit in a different way, even if they have already provided the deposit in such a guarantee** and the Ministry of Finance has accepted it. In such a case, the Ministry of Finance would return the original warranty card, but at the same time, the new warranty card must be submitted meeting the conditions of Act No. 186/2016 Coll., or the deposit may be provided by paying funds into the special account of the Ministry of Finance."

the Act enters into force. A similar principle will apply in the case of the income tax. The operator affected is currently company Lottovate Limited. The authorized person is then GLI UK Gaming Ltd (formerly NMi) and eCOGRA.

- In case a **bank guarantee is issued by a bank in another EU or EEA Member State** or by a bank, whose branch is based in the EU or EEA, **the MoF will no longer accept it, and it will be necessary to provide new warranty card.**