

# Cyprus' Betting Act: the key developments two years on

Nicholas Ktenas of Andreas Neocleous & Co LLC discusses developments in the Cypriot gambling sector since the Betting Law's passing in 2012, including proposed amendments to the Law.

The Betting Law of 2012 fundamentally revised the regulation of traditional and newer forms of betting in Cyprus. It has now been two years since the Law took effect, and so it is an appropriate time to review the state of the law in Cyprus.

After Cyprus joined 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 Attorney General of the Republic of Cyprus issued a controversial legal opinion confirming that in the absence of specific legislation to regulate this matter, nothing could be done to stop them, prompting a public debate over the legality of online gambling and culminating in the enactment of Law 106(I) of 2012 ('the Betting Law'), which regulates the provision of betting services and prohibits and criminalises all games of chance, including online games. The Law is based on Directive 98/34/EC of the European Parliament and European Commission ('EC') concerning the establishment of information procedures in the field of technical prototypes and standards and regulations relating to social services and information, as amended by Directive 2006/96/EC.

Articles 3 to 11 of the Betting Law establish a National Betting Authority ('NBA') and set out its powers and responsibilities. The NBA 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 combatting illegal betting. Article 12 of the Betting Law sets out the two classes of authorised betting services.

Class A covers the provision of betting services within licensed (physical) premises except for any services falling within class B or any horserace betting. Class B encompasses all forms of electronic (online) betting apart from limited benefit games machines, lucky online casino games and electronic betting on horseraces. While 'betting' (on sports or other events) is regulated, the use of any 'game machine' (including poker, horseracing, bingo and slot machines) on the other hand is strictly prohibited.

Betting services may be provided only by licensed persons or their authorised representatives.

Applications must be submitted to the NBA and are subject to its 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. Corporate applicants for a bookmaker's licence must be incorporated in Cyprus or must have a branch in Cyprus. The NBA 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 NBA. Licences are issued for one year or two years, and may be renewed on application subject to the approval of the NBA (Article 24).

Online services, which fall within Class B, are dealt with in Section VI of the Law, which sets out the

requirements regarding applications for Class B licences, provision of the relevant services and supervision by the NBA. 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 Betting 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, as an anti-money laundering precaution. 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 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 provided online may be provided only through a website using a '.com.cy' domain. ISPs in Cyprus are required to have control over all operating websites which offer such services and in particular, and on request from the NBA, 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 betting and gambling. Article 74 makes the provision of betting 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 of 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 Betting 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 of up to a year, a fine of up to €50,000, or both.

One of the most controversial provisions of the Betting Law is the prohibition on exchange, or peer to peer, betting contained in Article 80. This is justified by the Cyprus government on the grounds that there is no effective control of the mechanisms for placing bets. The government maintains that in order to protect its position as a reputable international financial centre, Cyprus must observe the highest standards of probity and protection against money laundering, and that against this background betting exchanges pose an unacceptably high risk. 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. The government contends that a small market such as Cyprus is particularly susceptible to abuse due to the limited number of participants.

Betfair, which derives significant revenue and profits from Cyprus, has formally complained to the EC that the Betting Law breaches EU market freedoms and is

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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 has 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 Betting Law since it is established under a specific bilateral agreement between Cyprus and Greece, which dates back to 1969 and was last revised in 2001. The sale of the Greek government's one-third stake in OPAP in 2013, making OPAP a fully private-sector company, further complicates matters.

In February 2013, after the NBA blocked access to two websites operated by Betfair on the grounds that Betfair did not have a Class B bookmaker's licence, Betfair successfully challenged the NBA's decision in the Supreme Court of Cyprus. One of the grounds on which Betfair's challenge was based, and with which the Supreme Court agreed, was that the NBA's decision to block access to its services, in the absence of regulations and directions for the proper application of the Law, constituted an illegal restriction of its freedom to provide services within the EU contrary to Article 56 of the TFEU, as it held a licence to carry out electronic bets issued by an EU Member State (Malta).

The current requirement that corporate applicants for a Class B bookmaker's licence must be incorporated in Cyprus or must

have a branch in Cyprus is considered to be incompatible with Article 56 of the TFEU and one of the proposed amendments to the Betting Law is to remove this requirement and replace it with the less restrictive requirement to appoint a permanent liaison officer to represent the Class B licence-holder in its dealings with the NBA. The liaison officer must be approved by the NBA and will be jointly responsible for implementing all terms of the licence and the licence holder's obligations under the Betting Law. The draft law also replaces the requirement of having a registered branch of an overseas company in Cyprus with the requirement to comply with the procedures and requirements for carrying out business in Cyprus set out in Part VIII of the Companies Law, Cap. 113 as amended. The same draft law also introduces the power for the NBA to impose an administrative fine of up to €100,000 for violation of the Law or associated regulations.

A second draft amendment law that is currently proposed enables the NBA or the police, on receiving a complaint regarding an offence under the Betting Law, to submit an *ex parte* application to the court for an order banning betting or the provision of betting services or suspending the operation of any premises associated with the offence being examined. Failure to comply with such an order is an offence punishable by up to five years' imprisonment, a fine of up to €300,000, or both. In addition the police will enforce the order and the enforcement costs will be borne by the person the order relates to and will be assessed and collected as a fine.

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