

HISTORY OF GAMBLING BUSINESS IN UKRAINE



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The history of gambling on the territory of present day Ukraine started at a time when the country was a part of the Russian Empire. In the 18th, 19th and early 20th Century, small casino clubs successfully (and mostly illegally) operated in Kiev, Yekaterinoslav, Kherson and Odessa.

In 1991, the Soviet Union was broken up. On August 24, 1991, the Verkhovna Rada proclaimed the independence of Ukraine, which was confirmed in a nationwide referendum on December 1, 1991. Meanwhile, the gaming business was buoyant in former USSR countries. By the time Ukraine had proclaimed its independence there were around ten casinos operating in Moscow, most of them run by joint ventures with

more than 50 percent share of the foreign capital. In addition, an affiliate structure of Goscomintourist, VHVO Intourservice, worked in many hotels in the Soviet Republic cities, including Kiev, Kharkov and Donetsk. It operated slot machines with cash winnings in hotels in the Intourist chain. Besides, foreign citizens, and then Soviet citizens as well, could gamble on slot machines installed on river and sea liners.

Many Ukrainian entrepreneurs were already aware that gambling operations were a profitable business. However, they had neither the experience nor the skills to arrange them; therefore they had to contact their foreign colleagues. For instance, the Ukrainian-Swedish joint venture, Split, was created in the country at the end of 1991. It was later renamed the Casino Split Group. Among the foreign investors, there was Cherryforetagen A.B., a famous company which had successfully opened casinos in Poland by that time.

In March 1992, the Split Casino was opened in the historical centre of Kiev, on Proreznaya Street. At first, the casino featured only slot machines; then gaming tables were installed there as well. In the same year, the Budapest Casino and the Zaporozhie Casino were opened in Kiev and the Zero Casino in Donetsk. A bit later casinos were opened in Kharkov, Odessa and Dnepropetrovsk.

Furthermore, a number of disintegrated plants in Odessa and Vinnitsa (the above-mentioned Terminal) gave birth to several firms which started to assemble the first slot machines independently and in the future became the leading manufacturers/operators of gambling in the country.

Any entrepreneurial activities in Ukraine at that time were regulated by the law «On Entrepreneurship» of February 7, 1991, #698-XII. The only thing necessary to start commercial operations in the country was state registration. And if a company was going to run a gaming business, it also had to obtain a special licence.

Licences for gambling operations were issued in the country in accordance with the Ukrainian SSR's Cabinet Council resolution of April 15, 1991, #99 «On the Procedure of Giving Special



Permits (licences) for Certain Activities to Business Enterprises and on the Amount of Fees for the State Registration of Business Enterprises». Pursuant to the resolution, licences for setting up and keeping gambling facilities and the arrangement of gambling, were issued by the executive committees of city, regional and state administrations at the location of the entrepreneur's business activities. The term of the licence – three years – was determined by the government of Ukraine. However, there were no licensing requirements for gambling arrangement at all.

On December 28, 1994, the Supreme Council adopted law #334/94-VR «On Company Income Taxation», which amended the procedure of the taxation of gambling operators. The taxation of gambling revenue was changed dramatically. Since then the taxation rate for gaming business has been the same as for any other entrepreneurial activities – 25 percent, but the procedure of taking into account expenses on lotteries and the gaming business was modified.

Gambling enterprises still generate little income for the state budget. This is mainly due to the fact that on March 23, 1996, the country passed law #98/96-VR «On Patenting Certain Entrepreneurship Activities», which provides

for establishing the procedure of patenting gambling operations performed by business enterprises or their structural (separated) units.

According to the law, a trade patent for performing operations on the provision of services in the gaming business sector is purchased based on the gambling operator's application and is issued for each separate gambling term (a slot machine, a gaming table). The term of the trade patent for performing operations on the provision of services in the gaming business sector is 60 calendar months. The trade patent fee for performing operations on the provision of services in the gaming business sector shall be paid from their income on a quarterly basis, till the 15 of the month preceding the reporting quarter.

The gaming business, pursuant to the law, is determined as an activity connected with the arrangement of casinos, other gaming venues (houses), slot machines with cash or prize winnings, arrangement of lotteries and raffles with monetary winnings paid out in the form of cash or property. Casinos and other gaming venues (houses) shall occupy separate premises or buildings and have a gaming floor for visitors (but for slot machines and billiards tables). Services in the gaming business sector cannot be provided outside the prem-



ises or buildings allocated for this purpose or in premises not having a gaming floor for visitors.

On purchasing a trade patent for performing operations on the provision of services in the gaming business sector, a business enterprise shall pay a one-off fee to the amount of the trade patent cost for three months per gaming equipment item (a slot machine, a gaming table, etc). The amount paid for purchasing the patent will be deducted from the amount of the payment for the trade payment due and payable in the last quarter of its operations. The business enterprise can make a pre-payment on the cost of the trade patent for performing operations on the provision of services in the gaming business sector for the total term of the trade patent validity. In the event of this happening, they will be exempt from the obligation of an additional payment for the trade patent in case the legislative acts adopted after it provide for the increase in its cost. The price of the trade patent for performing operations on the provision of services in the gaming business sector is established as a fixed amount and paid annually. The price is established neither in hryvnas nor in U.S. dollars but in ECU¹.

¹ A special European currency based on the «basket» of the EU member countries' currencies. Used from 1979 to 1998.

Thus the price of a trade patent for performing operations on the provision of services in the gaming business sector is as follows:

Kind of equipment	Tax rate, ECU/year
A slot machine with cash or prize winnings	350
A roulette table	8,000
A gaming table for other casino games with the exception of billiards tables	6,000

The above-mentioned amounts are recalculated in Ukrainian currency at the rate of the Ukrainian National Bank as of the date prior to the day when the payment for the trade patent is transferred.

Pursuant to the law, the trade patent proper shall be posted in the venue where services in the gaming business sector are provided. Besides, the trade patent is valid on the territory of the agency which has registered the business enterprise or with which the location of its structural (separated) unit has been agreed at the place where the trade patent was given to this very enterprise. The trade patent cannot be transferred to another business enterprise or to another structural (separate) unit of the business enterprise.

The rates increased year on year. In 1998, the cost of the trade patent was determined in hryvnas, not in ECU, being as follows:

Kind of equipment	Tax rate, hryvnas/year
A slot machine with cash or prize winnings	700
A roulette table	32,000
A gaming table for other casino games with the exception of billiards tables	24,000

On September 11, 1998, the first requirements were set for gambling facilities proper – the Licensing Chamber as the specially authorised central executive authority on licensing matters issued the corresponding instruction for the first time «On the Conditions and Rules of Performing Entrepreneurial Activities (licensing conditions) on Setting Up and keeping Gambling Facilities, Arrangement of Gambling and Compliance Controls» #86 (cancelled by the order of Gospredprinimatelstvo [State Entrepreneurship] of March 5, 2003, #19).

The previous concepts have been completely changed in the instruction. And many definitions that have become history by now are worth mentioning once again. For instance, according to the instruction, «A Gambling Facility» means a separate venue or building with a gaming floor for visitors (but for slot machines and billiards tables) where games of chance are arranged or conducted, including games using animals, birds, insects, etc., allowed to be kept. The novelty the instruction brings in is the subdivision of gambling permitted within Ukraine into games of chance, games of skill, totalisators and betting. The procedure of issuing licences for gambling operations remains unchanged. Licences are still issued by state administrations and district administrations in the cities of Kiev and Sevastopol, and also by executive authorities of city and district councils. The licence term is three years.

The conditions and rules of gambling operations have been modified. Thus, a gambling facility shall be located in a separate venue or building. Slot machines shall be located in a closed venue and access to the venue shall be controlled by an authorised natural person. Besides, the inside of a gambling facility shall not be visible from the outside. A gambling facility shall have a separately equipped space for keeping cash and other substitutes for the national currency – the hryvna. Each gambling facility shall feature a cash desk for selling and paying for plaques (other substitutes of the hryvna) controlled by an accountable person. The

gambling facility cash desk shall have sufficient funds for paying out the prize fund or for forming an insurance fund. There appeared requirements for employees and visitors of gambling facilities: none of them could be under 18 years of age. New prohibitive barriers for gambling operators have been implemented. Since then it has been forbidden to arrange gambling (fights) with animals, which led to their deaths or injury.

New requirements are set for gaming equipment. The gambling operator shall have the data on the technical condition of the gaming equipment, its operating life, the rules on using it, according to which, pursuant to the Ukrainian legislation in effect, the rules of standardisation and certification are established; and there shall be agreements or contractual documents per item of the gaming equipment, confirming its origin and the right to use it. Besides, the gambling operator shall approve the provisions on the prize fund, the provisions on the cash desk limit, in the amount of a customer's maximum possible winnings and also have cash registers for settlements with customers.

All casino games may be conducted only with gaming plaques, the denomination and the shape of which are established by the casino gambling operator. As for slot machines, they may be operated with plaques (or other substitutes for the hryvna) or with coins or bills (but for foreign currency). Each time plaques are handed out or paid for a payment document shall be executed – according to the procedure set by the State Tax Administration of Ukraine.

Control over compliance with the conditions and rules of the operation is exercised by the authorities which issue licences and also by the Licensing Chamber and its representative offices around the country, up to the year 2000. In 2000, after the administrative reform, the chamber was rearranged into the Ukrainian State Committee on Regulatory Policy and Entrepreneurship.

In 1999, the rates of trade patents are raised again – 1,400 hryvnas shall be paid for using a slot machine with cash or prize winnings, and 64,000 hryvnas shall be paid for using a roulette table.

However, businessmen still have to wait until more or less clearer rules on the gaming industry are adopted: on June 1, 2000, the Ukrainian law «On Licensing Certain Business Activities» was adopted in the country, and on September 21, 2000, a new, long-awaited type of licensing – setting up and keeping totalisators and gambling facilities – was included in the law.

Pursuant to the list of licensing agencies confirmed by the resolution of the Ukrainian Cabinet of November 14, 2000, #1698, the licensing agencies

for setting up and keeping totalisators and gambling facilities are as follows: the Cabinet Council of the Autonomous Republic of Crimea, regional state administrations and Kiev and Sevastopol city state administrations. The procedure of issuing licences, the licence terms and the licence fees are established. The licence term is now five years and the licence fee has been increased to 255 hryvnas.

Nevertheless, once the licensing of the new business activity – setting up and keeping totalisators and gambling facilities – was introduced, new problems emerged in the above-mentioned state authorities. Firstly, no one was able to determine what exactly «keeping gambling facilities» is, and, secondly, there emerged considerable inconveniences: it was necessary to adopt 27 sets of licensing conditions in the country, all of them – for one and the same activity.

The late 1990s and early 2000s were the first peak for gaming business development in Ukraine. Gaming houses and slot machines were mostly popular in large cities, first of all, in Kiev, Donetsk, Kharkov, Dnepropetrovsk, Lugansk, Lvov, Odessa and Simferopol.

In 2003-2004, the gaming business was not just popular in the country – it was too popular; whereas rules of its operations are mainly lagging behind the rate of its development. And, frankly speaking, local authorities are not committed to putting the gaming business sector in order.

The situation was not enhanced even by the documents adopted at the end of the year and created a great stir – the cabinet's resolution «On Confirming the Procedure of Internal Monitoring by Business Enterprises Setting Up and keeping Casinos, Other Gambling Facilities and Pawnbrokers' Offices» of November 20, 2003, #1800, and the State Tax Administration's (STA) order «On Confirming the Procedure of Accounting the Income of Natural Persons in Gambling Facilities and of Identifying These Persons» of October 20, 2003, #494. Both documents came into effect as of January 1, 2004.

STA order #494 is worth considering about first of all. Pursuant to it, and in accordance with the law «On Tax Revenues», as of January 1, 2004, any gambling operators shall keep the register of the identification of natural persons – visitors to gambling facilities, in which, inter alia, the full name, the passport number and series, the citizenship and the registered place of residence of each visitor are logged². Businessmen were not

² The rules of logging the Register of Visitors' Identification are described in detail in the letter of the Ukrainian STA of April 21, 2004, #385/6/17-3116.

in a hurry to observe these rules and the STA did not create any vehicles for their practical implementation. Besides, the people willing to show their passports at the entrance were not that numerous and the gambling operators were hardly scared by the sanctions they faced. As a result, due to the absence of the implementation vehicle for this legal standard, the effect of the document was mostly formal and the STA still does not receive any relevant information on visitors to gambling facilities.

Even more dramatic changes in the regulation of the gaming business took place on March 31, 2005, - the law «On Amending the Ukrainian Law «On the State Budget for the Year 2005 and On Amending and Modifying Some of the Ukrainian Legal Acts» #2505 came into effect. The law provided for new tax rates for trade patents for gambling operations. At present they are as follows:

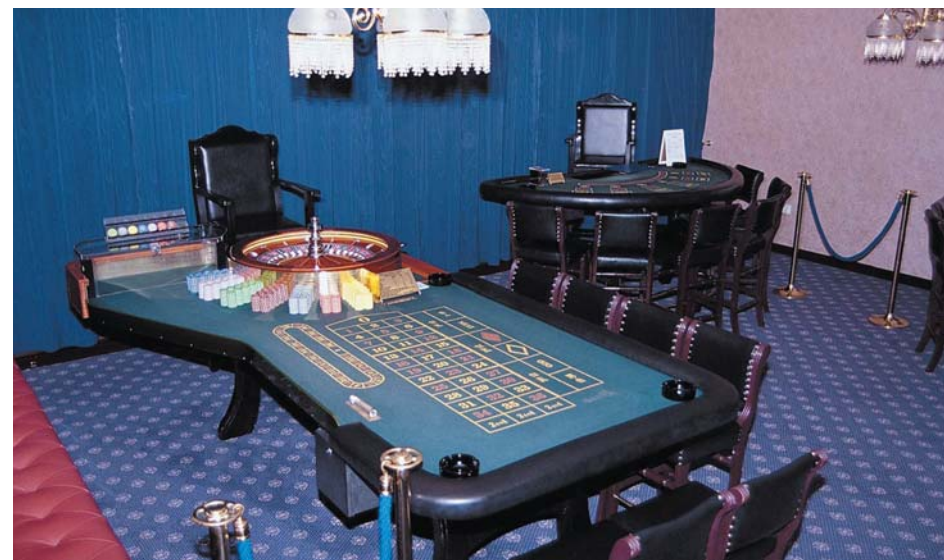
Kind of equipment	Tax rate, hryvnas/year
A slot machine with cash or prize winnings	4,200
A roulette table	192,000
A gaming table for other casino games with the exception of billiards tables	144,000

But, which is most important, the law now contains a new kind of entrepreneurial activity subject to licensing – «Organisation of Activities on Gambling Arrangement». It is for the first time that it defines what gambling is – games on slot machines, in casinos, electronic (virtual) casinos, in bookmakers' offices and totalisators. This new kind of licensing brings in new amounts of licence fees: to run a gaming business, now one has to pay a one-off licence fee to the amount of 150,000 euros recalculated into hryvnas at the rate of the Ukrainian National Bank as of the day of the payment. The new requirements came into effect as of April 12, 2005.

Pursuant to the law, the licence is issued for each:

- business enterprise (a legal entity or a natural person – entrepreneur) which performs operations on the organisation of gambling on slot machines;
- a totalisator office performing bookmakers' operations;
- an electronic server for an electronic (virtual) casino;
- a gaming floor for the arrangement of gambling in casinos and on slot machines.

But, on establishing the new standards, the lawmakers, which is not uncommon, had forgotten to



cancel the previous standards, now irrelevant but still in effect. And as a result, a most unpleasant legal collision occurred which still exists – the necessity to obtain as many as two licences (for gambling and for keeping totalisators and gambling facilities) for, actually, one and the same activity.

Eventually the government's resolutions with the same 27 licensing authorities (the Cabinet Council of the Autonomous Republic of Crimea, regional state administrations and, in Kiev and Sevastopol, city state administrations), with the same list of documents to be submitted to the licensing authority for obtaining a licence for «setting up and keeping totalisators and gambling facilities» are still in effect. The amount of the licence fee – 255 hryvnas and the licence term – five years, also remain unchanged. And it is indistinct not only for the gambling operators but also for the authors of the documents how to differentiate one activity (gambling organisation and arrangement) from the other (setting up and keeping totalisators and gambling facilities).

It was the first time that the Ministry of Finance became the agency responsible for the licensing of gambling operations, pursuant to the government's resolution of December 21, 2005,

#1254. The resolution came into effect on April 12, 2006, and it was when they started to issue new licences in the country. The licenses issued by the Ministry of Finance cover the following kinds of gaming business:

- organisation and arrangement of slot machine gambling;
- bookmakers' operations;
- arrangement of gambling in electronic (virtual –) casinos;
- casino gambling operations and arrangement of other games of chance.

Another interesting event took place in Ukraine in 2005 – on June 2, the law «On Licensing Certain Business Activities» was amended, pursuant to which the moratorium on issuing licences for business activities involved in lottery release and arrangement was introduced in the country.

In 2006, the process of legal regulation of the gaming business in the country was supposed to enter its completion phase. By that time, as many as seven legal projects had been registered at the Verkhovna Rada, contemplating on various extents of the industry regulation – from a liberal scheme of licensing to the prohibition of gambling throughout Ukraine but for four special gaming zones. The