

- > [Gambling Regulation](#)
- > [Europe, UK, USA](#)
- > [Information Technology](#)
- > [Data Protection](#)
- > [EU Law](#)

The Western Frontier

MGM, Boyd and BwinParty join forces



Finally! The events of Black Friday are slowly fading and the first major deal between US land based and EU online operators is signed, sealed and official: BwinParty will partner with MGM Resorts and Boyd Gaming in a future US online poker market to launch its PartyPoker and World Poker Tour brands on a shared platform. These agreements are subject to US regulatory approval and contingent on the legalisation of online poker in the US.

However, the mere fact that this entente has been formed in the first place indicates the confidence of all parties involved that online poker will be legalised in the not too distant future. A combined platform could capture a major part of the US online poker market.

Harris Hagan acted as European Counsel for Boyd Gaming in this major transaction. The firm provided commercial, transactional and regulatory advice and the team was led by Julian Harris, supported by David Stevens and Marcos Charif.

The new alliance still has to cross some major hurdles, including BwinParty's submission to regulatory scrutiny by the Nevada Regulators and the legalisation of online poker. However, the foundations have been laid and we expect to see other US casino companies looking to position themselves for online regulation. Going down this route without EU online expertise, however, may prove costly, as MGM would itself testify in the light of its technologically successful but loss making foray into the online gambling market a decade ago.

The new alliance between US and EU giants has encouraged the gambling sector to look at the Western Frontier again ...

Inside this issue

| | |
|--|---|
| UK tax regime and levy | 2 |
| UK licence fees | 3 |
| UK advertising | 3 |
| European update: Germany, Denmark and Greece | 4 |
| UK casinos update | 5 |

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Chambers Guide to the Legal Profession

A new approach to gambling regulation in the UK?

Consultation launched on a possible review of taxation regime for remote gambling.

Back in June, the UK government announced its intention to introduce a licence requirement for overseas operators and, at the same time, to review the taxation regime for remote gambling. It is considering the option of taxing operators on the basis of customer location.

Whether the introduction of the (national) licence for overseas operators targeting British residents will be a success, will depend heavily on taxation. At present, EU based online gambling operators can advertise to and accept wagers from the UK, while UK licence holders are not restricted from accepting wagers from overseas residents. The Secretary of State does have the power to designate a country as a “prohibited territory”, but has not exercised this power yet. This “worldwide” licence (although never referred to as such) may have to change once HM Treasury has reached a decision on how (and who) to tax.

Let’s think this through, shall we? Currently EU based operators accept UK wagers without paying tax— this will change under the new licensing regime, when all overseas operators will be required to have a UK licence. On the other hand, UK licensed operators can accept wagers from the rest of the world, and HM Treasury is happy to tax these as well. It is unlikely, however, that HM treasury can continue to do so, bearing in mind that the UK Government’s intention is to introduce tax on the basis of customer location! HM Treasury has not yet decided whether UK licence holders will also be taxed on worldwide wagers. It is currently pre-occupied with looking into taxation treaties to ensure that the current tax regime remains, while overseas operators will also be required to contribute to UK coffers!

But taxing UK based operators differently (i.e. worldwide), while overseas operators would only be taxed on place of consumption, doesn’t sound fair. In fact, it raises some major EU competition law problems with UK licensed operators clearly at a disadvantage... unless of course HM Treasury decides to tax all overseas licence holders on their worldwide winnings as well? In which case, we should quickly forget about reviving the UK online gambling industry...!



Horserace betting levy... dinosaur taxus rex?

UK bookmakers have agreed to pay an extra £72.4m in the year from April 2012 to support the horseracing industry, an increase of £1m from the current year. The increase is, however, less than inflation, so in real terms it means a reduction in support for the industry. A commitment from William Hill, Ladbrokes and Gala Coral, however, to contribute at least £45m “provides more certainty for all parties and valuable assistance for the Levy Board’s financial planning” according to the Horserace Betting Levy Board chairman Paul Lee.

The horserace betting levy, a “problem child” for the UK gambling sector—and indeed the UK Government, if rumours are to be believed that the horserace betting levy is a state aid in disguise and would therefore fall foul of EU Law. UK betting operators have been struggling with the on-going demands of the sports sector, ranging from “sports IP Rights” a la francaise to UK ideas of taxing bookmakers on horse races worldwide... Entering Jurassic Park will be a walk in the park compared with the next negotiations on the levy.

The ABB (Association of British Bookmakers) is rightly pushing for an end to the levy system which was established in the 1960s and which is based on gross profits made by bookmakers on horse racing.

Once overseas operators will be required to apply for a UK licence, the levy system will become everyone’s problem and - depending on the reasonableness of the sports sector—may have to be resolved in EU courts in the end.

Gambling Commission reviews licence fees

The Department of Media, Culture and Sport and the Gambling Commission have launched a joint consultation on the proposed fees for operating licences from 6 April 2012. The objectives pursued by the Commission are to reduce the burden of regulation, to make fees reflect costs within fee bands and to recover the costs of regulation more equitably. The closing date for the consultation is 15 December 2011.

The most significant proposals are:

1. A reduction of the fees for operators bidding for the new 2005 Act casinos:
 - o The period for payment of the first fee will be extended from 30 days to 6 months after the operating licence is granted; and
 - o A 50% discount (currently it is a 25% discount) for the first annual fee: under the proposals it would be £54,066 for large casino licences and £25,938.50 for small casino licences.

This proposal addresses the difficulty faced by those choosing to make a Stage 1 application for a premises licence, rather than a provisional statement. It is necessary to have applied for the appropriate casino operating licence in order to make a premises licence application. However until the completion of the competition process, operators do not know whether they will in fact be granted a large / small casino premises licence. The proposed delay in payment and fee reduction significantly reduces the financial burden on prospective operators in this situation.

2. The introduction of a new category of licence, to be known as the general betting (standard) (remote platform) operating licence, for those that use betting exchanges or other remote platforms to place bets "in the course of business" (application fee: £198, annual fee: £280). Technically, such businesses currently require a full remote betting operating licence.
3. An increase in the number of bands in various categories of licence to spread sector costs more fairly.
4. Fee reductions averaging 7% for smaller arcade, bingo and betting operators and fee increases for larger arcade, non-remote bingo and betting operators (£304,960 for a general betting standard non-remote operating licence for 2000 to 2499 shops, instead of £236,927 today).

ASA rules on misleading gambling adverts

The Irish giant bookmaker Paddy Power made a special offer for the 2011 Champions League's final won by FC Barcelona: they offered to reimburse some bets, up to £100, if FC Barcelona won in regular time (and well, apologies for any Manchester United supporters...they did it quite easily). Two ads (one on TV and one on radio) were broadcast and complainants challenged whether they were misleading because the main claim was contradicted by the terms and conditions, which restricted refunds to certain types of bet.

The Advertising Standards Authority ruled in favour of complainants and considered that the main claim was, in both ads, contradicted. The ads were misleading and breached the BCAP (Broadcast Committee of Advertising Practice) Code.

William Hill has also been before the ASA, regarding a bonus offer which stated: "£150 Bonus for all new casino players". Smaller text stated "* Requires a £35 minimum deposit, terms and conditions apply".

The ASA found this to be misleading, implying that players who deposited £35 would receive a £150 bonus, whereas in fact they received a £35 bonus.

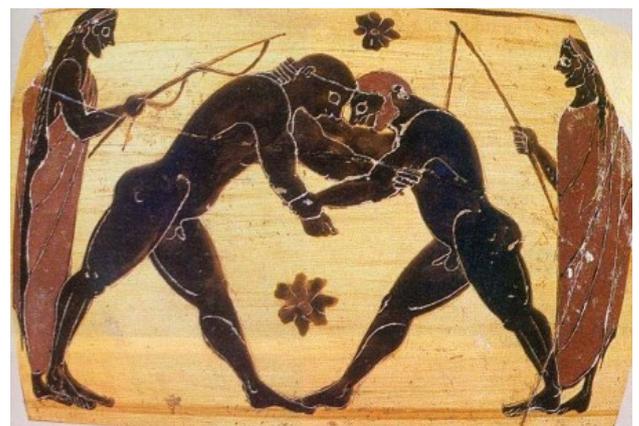
Although such bonuses and offers are now an essential part of any remote gambling operator's marketing strategy, operators should be careful in advertising not to exaggerate the terms of offers and bonuses to the extent that players are misled.



Germany: So it's true: size does not matter! On 14 September tiny Schleswig-Holstein passed its first own e-gaming treaty. The law includes a tax of 20% on gross gambling profits and an unlimited number of licences for poker, casino games (with the exception of roulette) and sports betting. Operators such as Bwin Party and Jaxx have already indicated their intention to apply for a licence. However, Schleswig-Holstein had recently announced that breaking away from the other States was not its preferred solution. In fact, Schleswig-Holstein's courageous move may prove to be legally inconsistent and take it into uncharted constitutional waters. The small German state has come under additional extreme pressure from all 15 German states who have reached an agreement to implement their own (highly restrictive) online gambling treaty. Although the 15 German states express confidence that the new treaty will be EU compliant, Schleswig-Holstein has already expressed its surprise that the new treaty has not been submitted to the EU Commission for approval.

Denmark: The European Commission has approved Denmark's draft gaming law. Some concerns were expressed about the low tax rate for online operators compared to land-based ones. The Commission acknowledged it was a form of state aid but concluded that it was necessary to ensure the competitiveness of Danish licensed online websites against non-licensed websites which had paid no taxes or low tax rates. The Commission stated that *"the lower rate of taxation for online gambling indeed constitutes state aid"*, but *"the positive effects of the liberalisation of the market outweigh the distortions of competition brought about by the measure"*. So what now? It appears that the date (many times postponed), of 1 January 2012, when the market was due to open, will be honoured. The Danish Gambling Authority is already accepting applications, but for those wanting to operate in Denmark as soon as the beginning of next year, it's already too late. The deadline for such applications was noon on 17 October 2011. As the Authority will not have a lot of time to scrutinise each application in every detail, it has been decided that licences will be issued for only one year. Licence holders will be given up to one year to obtain certification of their gambling systems. After a complete examination of the application, the Authority will issue licences for five years if its requirements are met. This will not mean extra fees for operators that already have the one-year licence. If requirements are not met, the one-year licence will be revoked

Greece: The Remote Gaming Association lodged a complaint, on 4 October 2011, to the European Commission challenging the legitimacy of tax provisions in the new Greek Gambling Law (see our September newsletter). It sets up a 30% tax on gross profits for online operators, from which OPAP, the existing monopoly land-based operator (34.4% owned by the State) would be exempt. Clive Hawkswood, Chief Executive of the RGA, stated: "Remote operators wish to obtain licences in Greece and to continue to offer Greek consumers competitive and well-regulated products. However the current unjustified fiscal favouritism being afforded to OPAP makes this extremely difficult and we urge the European Commission to investigate the new legislation for being in breach of State aid rules".



He also added that "There are concerns that the new law provides tax benefits for OPAP's land-based operation with the aim of increasing its value prior to a proposed sale of the government's share." OPAP struck back, arguing that it was ironic that several companies acting without a licence in Greece and "without contributing a penny to the Greek economy through tax" were disputing OPAP's fiscal payments.

Harris Hagan is the only City law firm dedicated exclusively to the provision of legal services to all sectors of the gambling and leisure industry in the UK and internationally.

We offer unparalleled legal experience, knowledge and commercial understanding of the industry. We understand not only the law associated with betting, gaming, licensing and the provision of entertainment facilities, but the business behind it. We aim to provide a full service to the gambling and leisure industry, including specialist regulatory, corporate and commercial advice.

We have advised many of the world's largest gambling and leisure operators. We also advise UK companies in all areas of land-based and online gambling. Our clients include governmental organisations, casinos, hotels, bars, restaurants, event venues, bookmakers, online gambling operators, start up ventures and manufacturers of gambling equipment.

Land Based Casinos The Gambling Act 2005 allows for 16 additional casinos to be built in the UK. The licences must be issued by the relevant local licensing authorities at the end of a "two-stage" application process.

Eight Large casinos

- **Great Yarmouth:** two applications granted at Stage 1
- **Kingston-upon-Hull:** Apollo granted a Provisional Statement in Hull
- **Leeds:** Statement of Licensing Policy to be issued
- **Middlesbrough:** two Stage 1 applications (Apollo and Aspers)
- **Milton Keynes:** five applications at Stage 1, decision early 2012
- **Newham:** **Harris Hagan** acted on behalf of Aspers in their successful application for a large casino licence in 2011
- **Solihull:** licence granted to Genting UK in June 2011
- **Southampton:** statement of Licensing to be considered in 2012

Eight Small casinos

- **Bath and North East Somerset:** four applications (Apollo, Gala Casinos, Global Gaming and Grosvenor) at first stage, Stage 2 on-going
- **Dumfries and Galloway:** the competition process is not yet underway
- **East Lindsey:** the Statement of Principles was adopted in 2010. Nothing has been done since then
- **Luton:** the two stage process will be launched at the beginning of 2012.
- **Scarborough:** two applications have been granted at Stage 1 (Apollo and Nikolas Shaw Ltd.), Stage 2 on-going
- **Swansea:** a new Gambling Policy was adopted in 2010 but nothing has been done since then
- **Torbay:** no indication of the start of the process has been given
- **Wolverhampton:** the Statement of Gambling Policy is currently under review after last summer's public consultation. There is no scheduled date for the start of the two stage application

Gambling

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"True licensing specialists, with in-depth knowledge and the resources to commit to a job"... the firm is regarded as "absolutely the number-one betting and gaming firm."

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"Leading light' Harris Hagan remains a 'trusted' specialist practice offering a 'personal service'."

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