

Erik Ullberg Partner
erik.ullberg@wistrand.se

John Olsson Lawyer
Wistrand Advokatbyrå, Gothenburg and Stockholm

The re-regulation of the Swedish online gambling market

The Swedish Government put forward in April 2018 a Bill proposing a new licence based gambling regulation in Sweden. The Bill follows the report put forward by the Committee tasked with creating a proposal for reforms to the Swedish gambling market, and, given its broad cross party support, it is expected that the Bill will pass when voted on in the Swedish Parliament in early June 2018. Erik Ullberg and John Olsson of Wistrand Advokatbyrå outline here the key components of the Bill and how it would alter the Swedish online gambling landscape.

The Swedish online gambling market is currently a *de facto* monopoly, where it has only been possible for state-owned or state-controlled companies or public interest associations to provide gambling services.

This regime has for a long time been heavily criticised and attacked by foreign online gambling companies who have directed their services towards the Swedish market. The Swedish Government has offered little or no interference against such operators, which has rendered the monopoly ineffective in practice.

The European Commission has previously also raised concerns as to whether the Swedish online gambling regulation is compliant with EU law.

The Commission even went so far as to release a press statement in October 2014 in which it announced it would be referring Sweden to the Court of Justice of the European Union ('CJEU') for lack of compliance in the areas of online betting and poker services. No such application was ever filed with the CJEU, however, and the Commission has since closed all infringement procedures in the gambling sector, but not before the Swedish Government had initiated a reform of the gambling regulation.

Immediately following the Commission's press release, the Swedish Government appointed a committee with the explicit assignment of laying forward a proposal for a new gambling regulation based on a licensing system. The report was presented in March 2017 and has,

after formal consultations, resulted in a Bill, presented by the Government in April 2018, which proposes a new licence based gambling regulation.

The Bill proposes, *inter alia*, a division of the gambling market into two sectors: one exclusive and one competitive. The exclusive sector, reserved for state-controlled companies and public interest associations, comprises online and land-based lotteries, as well as land-based casinos, bingo and gambling machines, while the markets of online casino, betting, poker and bingo, as well as land-based betting, will open up for competition.

The Swedish online gambling market as a whole is estimated to have a total net turnover (after paid winnings) of over SEK

Seeing as the same legal person will not be allowed to act within both sectors, Svenska Spel will have to adapt its business if it wishes to continue to offer into both sectors.

10.3 billion (£860 million), most of which will now be subject to competition. The state-owned company Svenska Spel, who up until now has had a monopoly on online betting and poker, and ATG, which is the sole provider of horseracing betting, will thus find themselves competing with private operators.

The foreign online gambling operators' net turnover on the Swedish online gambling market is currently estimated to be more than SEK 5.5 billion (£460 million). Licences will also be required in order for the operators to maintain their business, as the new regulation proposes strengthened sanctions for providing and promoting unlicensed gambling services, including harsher penal provisions and increased fines compared to the current legislation. In addition, it is proposed that the provision of payment solutions aimed at unlicensed gambling activities will be held to be illegal and that accounts used to transfer bets and winnings to unlicensed operators could be blocked. It is also proposed that ISPs should be required to display warning messages when a user attempts to gamble on unlicensed sites.

State-owned Svenska Spel is currently offering services within both the exclusive and competitive sector. Seeing as the same legal person will not be allowed to act within both sectors, Svenska Spel will have to adapt its business if it wishes to continue to offer into both sectors. It has been proposed that the operations of the company should be divided but the Government has concluded that the decision on the form of the adaptation rests with Svenska Spel's board. It has also been suggested that if Svenska Spel is divided into two companies, the company acting in the competitive section should be sold off but the Swedish Government does not currently seem to have any such plans.

Licences in the competitive sector can be sought by companies established or persons living in the EEC, or by

companies or persons outside the EEC, if the applicant has appointed a representative that lives in Sweden.

In order to obtain a licence to provide gambling activities the applicant must meet the requirements of insight, experience and organisation needed to operate the planned activities; there should be reason to assume that the activities will be operated in accordance with the law and other statutes; and the applicant must be deemed suitable, taking into account its reputation and financial strength. The requirements also apply to the applicant company's board, management, shareholders who hold more than 10% of the share capital or voting rights, or otherwise can exercise a significant influence over the company's management, as well as certain other categories of employees.

When assessing the requirements, the applicant's employees, leadership, routines and other organisational resources shall be considered, including the employees' education and experience from similar activities. For online gambling, a key factor will be the applicant's access to technical personnel who can guarantee a secure gambling environment. The applicant's gambling and business systems, routines, and randomisation equipment, etc, must also be controlled, tested and certified by an accredited body.

As for the general criteria of suitability, the Gambling Authority will take into consideration e.g. whether the applicant has previously disregarded any obligations in its business activities, or if the applicant directs gambling services towards customers in countries where the company cannot legally provide them. Other factors to be considered are the applicant's capital strength and other financial conditions. If the applicant is part of a group of companies, the entire group's collective knowledge, experience, organisation, financial strength, etc, can

be considered, provided that the group's resources are relevant and can in fact be made available to the applicant.

The Bill proposing a new licence based gambling regulation will be voted on by the Swedish Parliament in early June 2018 and is expected to be passed into law, seeing as there has been broad political support for the re-regulation of the gambling market.

The new regulation is proposed to enter into force on 1 January 2019, but on 1 August 2018 it should be possible to begin filing applications for licences with the Swedish Gambling Authority. Licences can be awarded for a period of up to five years but considering the short period of time that will have passed since the Parliament vote, the Gambling Authority will likely not be up to full speed by the start of the application period and it has been speculated that short term licences will be issued initially with only superficial assessments of the applications, and that more thorough reviews and longer licences will follow.

The licence fee will be SEK 400,000 (£33,400) for both online gambling and betting, or SEK 700,000 (£58,400) if both are applied for at the same time. The Bill also suggests a tax rate of 18% based on net gambling revenue. Licensed gambling companies will also, like all other companies, pay 22% corporate tax on profits.

Even though the licences are not limited in number, it can be expected that the established online gambling operators will race to acquire licences, and other holders of large sports rights and fixtures, such as Swedish football and ice hockey, have also been rumoured to be interested in entering the game. It can be presumed that there will be quite a lot of movement on the Swedish gambling market, in the form of licensing, new operations and M&A, as a result of the new gambling regime: the coming years will be interesting, to say the least.