

1085**DECREE OF THE MINISTER OF FINANCE¹⁾**

of 27 August 2010.

**on the detailed conditions under which tenders may be issued to applicants for
for the grant of a concession to operate a casino or a licence to operate a bingo hall**

Pursuant to Article 33(5) of the Act of 19 November 2009 on gambling games (Journal of Laws No 201, item 1540 and of 2010 No 127, item 857), it is ordered as follows:

the detailed scope of activities of the Minister of Finance (Journal of Laws No. 216, item 1592).

§ A notice of a tender for entities applying for a concession to operate a casino or a permit to operate a bingo parlor, hereinafter referred to as "the tender", shall be announced on the notice board of the office serving the minister responsible for public finance and in the Public Information Bulletin on the sub-site of that minister.

2 The tender notice should specify:

- 1) the date of its announcement;
- 2) the subject matter of the tender, including the scope of the concession to operate a casino, hereinafter referred to as the "concession", or the licence to operate a bingo parlor, hereinafter referred to as the "licence";
- 3) the required content of the offers;
- 4) criteria and method of evaluating tenders as defined in § 2;
- 5) venue and dates:
 - a) submission of tenders,
- b) opening of tenders,
 - c) launch of the tender,
 - d) award of the tender,
 - e) announcement of tender results.

§ 2. 1. The following bid evaluation criteria are established:

- 1) the attractiveness of the proposed location of the casino or cash bingo parlor, whereby:
 - a) the location of the building is considered preferable:
 - in the city centre,
 - on a busy traffic route,
 - within or in the immediate vicinity of the centre of entertainment,
 - b) the following building standard is considered preferable:
 - hotel of three, four or five stars,
 - historic building or new building;

¹⁾ The Minister of Finance heads the department of government administration

- Public finances, pursuant to § 1 section 2 item 2 of the Ordinance of the Prime Minister of 16 November 2007 on

- 2) the planned date of commencement of the operation of the casino or bingo hall;
- 3) the scheduled opening hours of the casino or bingo hall;
- 4) the timeliness of commencement of existing activities after having obtained the concession or permit as a result of the tender, taking into account the concessions and permits obtained during the last three calendar years preceding the year in which the tender notice was issued;
- 5) the correspondence between the amount of the tax base for the gaming tax previously declared by the entity that obtained the concession or permit as a result of the tender and the actual amount obtained in the activity conducted on the basis of such concession or permit, taking into account the concessions and permits obtained in the last three calendar years preceding the year in which the tender notice was issued;
- 6) cases:
 - a) the withdrawal of a concession, licence or other gambling exemption, or
 - b) a request from the authority granting the concession, exemption or other gambling licence to remedy any identified deficiencies
 - in the last three calendar years preceding the year in which the tender notice was issued;
- 7) deficiencies in previous gambling activity, confirmed by the authority granting the concession, licence or other gambling authorisation or the authority responsible for control in the last three calendar years preceding the year in which the tender notice was issued;
- 8) profitability, defined as the net result, as determined in the "Income Statement" in accordance with accounting regulations, in each of the last three years of operation;
- 9) experience on the gambling market, defined as previous conduct of gambling activity in the territory of the Republic of Poland, another Member State of the European Union for a period of at least one year by the entity applying for a concession or licence, its shareholders, members of its management board or members of its supervisory board.

Member State or a Member State of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or the Organisation for Economic Co-operation and Development.

2. By the terms used in paragraph 1(1):

- 1) Direct neighbourhood - is to be understood as the neighbourhood of two buildings (wall to wall) or land parcels on which the buildings are located, also in the case where the parcels are separated only by a communication route in which no other structures or buildings are located;
- 2) entertainment centre - should be understood as a separate building with facilities for entertainment and recreation, such as a billiards club, café, disco, bowling alley, night club;
- 3) historic building - a building which is listed in the register of historic buildings;
- 4) new building - means a building that was put into use no earlier than two years before the date of the announcement of the tender notice.

3. The scores for each of the tender evaluation criteria referred to in paragraph 1 are set out in the Annex to the Regulation.

4. The points awarded for each element listed in paragraph 1(1) under the criterion of attractiveness of the location shall be added up.

5. The tender with the highest number of points shall be deemed the most advantageous tender.

§ 3 Entities applying for a concession or permit shall submit to the office serving the minister responsible for public finance an offer in writing, in sealed or sealed envelopes.

§ The period between the date of the announcement of the tender and the date on which the deadline for the submission of tenders expires shall not exceed 40 days.

(2) The period between the closing date for the submission of tenders and the closing date for the tendering procedure shall not exceed 4 months.

§ 5 The tender shall be conducted in writing.

§ The tender consists of a public and a non-public part.

2. In the public part of the tender, the Tender Committee:

- 1) shall reject tenders submitted after the deadline;

2) opens the remaining envelopes of the tenders; entities applying for a concession or licence may be present at the opening of the tender envelopes.

3. In the closed part of the tender, the Tender Committee shall

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- 1) rejects non-compliant tenders:
 - a) specified in the provisions of the Act of 19 November 2009 on gambling,
 - b) regarding the content of the tenders as specified in the tender notice;
- 2) shall either select the most advantageous tender or determine that none of the tenders was selected as the most advantageous.

§ 7. 1. The Tender Committee shall prepare minutes of the course of the open and closed parts of the tender, which shall include:

- 1) indication of the place and time of the tender;
- 2) the names of the members of the bidding committee;
- 3) the number of bids submitted;
- 4) the indication of the tenders referred to in § 6.2.1 and § 6.3.1, together with the reasons for the rejection of tenders;
- 5) the tender committee's findings pursuant to § 6(3)(2), stating the reasons why no tender was selected as the most advantageous;
- 6) signatures of the persons making up the fair committee.

2. The tender committee shall forward the minutes to the minister responsible for public finance.

3. Transmission of the minutes to the minister responsible for public finance concludes the tender procedure.

§ 8 The regulation shall enter into force on the day of its promulgation.²⁾

Minister for Finance: with *W. Szczuka*

⁽²⁾ The scope of matters regulated by this Ordinance was previously regulated in the Ordinance of the Minister of Finance of 3 June 2003 on the implementation of certain provisions of the Games and Betting Act (Dz. U. No. 102, item 948 and No. 217, item 2133, of 2004. No. 272, item 2691, from 2005. No. 266, item 2233, from 2006. No. 246, item 1801, from 2007. No. 247, item 1827, from 2008. No. 182, item 1123 and No. 235, item 1592 and of 2009. No. 124, item 1027 and No. 181, item 1414), which ceased to be in force on 2 July 2010 in accordance with Article 143 of the Act of 19 November 2009 on games of chance (Journal of Laws No. 201, item 1540 and of 2010 No. 127, item 857).

SCORES FOR TENDER EVALUATION CRITERIA

1. The attractiveness of the proposed location of the casino or cash bingo parlor:

1) building location:

- a) 1 pt - in the city centre,
- b) 1 pt - next to a busy traffic route,
- c) 1 pt - within or adjacent to an entertainment centre;

2) building standard:

- a) 5 points - four or five-star hotel,
- b) 4 points - historic building,
- c) 3 pts - new building,
- d) 3 points - three-star category hotel.

2. Planned date of commencement of operation of the gaming casino or bingo parlor:

1) 3 points - in the case of declaration of the shortest start-up period by the entity or entities applying for the concession or permit;

2) 2 points - in the case of declaring the second longest time limit for the start of activity by the entity or entities applying for the concession or permit;

3) 1 point - in the case of declaring the third longest time limit for the start of activity by the entity or entities applying for the concession or permit.

3. Scheduled opening hours of the gaming casino or bingo parlor:

1) 1 point - if the facility will be open for more than 12 hours a day;

2) 0.5 points - if the facility will be open between 8 and 12 hours a day;

3) 0 points - if the facility will be open less than 8 hours a day.

4. Timeliness of commencement of existing activities after obtaining a concession or permit as a result of a tender in the last three calendar years preceding the year in which the tender notice was issued:

1) 3 points - if the entity applying for the award of a concession or permit obtained a concession or permit in this period as a result of a tender and commenced operations within the time limit declared in the tender, with the reservation that in the case of an entity which obtained more than one concession or permit in this period, the number of points shall be from 0 to 3, respectively:

a) 3 points - if between 100% and 75% of centres are opened within the declared timeframe,

b) 2 points - if less than 75% to 50% of centres are opened within the declared timeframe,

c) 1 point - if less than 50% to 25% of centres are opened within the declared timeframe,

d) 0 points - if less than 25% of centres are opened within the declared timeframe;

2) 2 points - in the case of an applicant for a concession or permit who:

a) has not yet obtained a concession or permit as a result of a tender procedure, including the fact that it has not yet participated in a tender procedure,

b) has obtained a concession or permit as a result of a competitive tender in another period,

c) cannot be assessed due to the fact that the declared start date has not yet passed;

3) 0 points - if the entity applying for a concession or permit obtained a concession or permit in this period as a result of a tender, but did not commence operations at the date declared in the tender.

5. The consistency of the amount of the gaming tax base previously declared by the entity that obtained the concession or permit as a result of the tender with the actual amount obtained in the activity conducted on the basis of such concession or permit, taking into account the concessions and permits obtained in the last three calendar years preceding the year in which the tender notice was issued:

1) 4 points - where the correspondence between the declared and the actual taxable base is between 75 % and 100 %,

2) 2 points - where the correspondence between the declared and the actual taxable base achieved is between 50 % and 75 %,

3) 2 points - in the case of entities which have not participated in the tender procedure so far or have obtained a concession or permit as a result of a tender procedure in another period or in respect of which it is not possible to verify the declared amount of the tax base due to a too short reporting period,

4) 0 points - where the correspondence between the declared and the actually generated taxable base for gaming tax is less than 50%.

- whereby, in the case of an entity that has obtained more than one concession or permit for the last three calendar years preceding the year in which the notice of invitation to tender was issued, the

exemption as a result of a tender, the average of the taxable amounts declared and obtained shall be taken into account.

6. Cases where a gambling concession, licence or other authorisation has been withdrawn or where the authority granting such a concession or authorisation has called for the rectification of deficiencies identified in the last three calendar years preceding the year in which the tender notice was issued:

- 1) 2 pts - in the case of an entity:
 - a) to whom no licence, exemption or other authorisation for gambling was withdrawn during that period or to whom no request for rectification of identified shortcomings was addressed during that period,
 - b) who did not carry out gambling activities during this period;
- 2) 0 points - in the case of an entity which in this period was sent a call for rectification of the shortcomings identified or which had a licence, permit or other authorisation for gambling withdrawn.

7. Deficiencies in an existing gambling activity, confirmed by the authority granting the concession, licence or other gambling authorisation, or

the authority competent for control in the last three calendar years preceding the year in which the notice of the fair was announced:

- 1) 1 pt - where there have been no evidenced failures during this period and in the case of entities that have not carried out gambling activities during this period;
- 2) 0 points - where deficiencies have been identified and confirmed during this period.

8. Profitability (net result in each of the last three years of operation):

- 1) 2 pts - in case of a positive result;
- 2) 1 point - in the case of entities for which the net result cannot be determined for the last three years of activity;
- 3) 0 points - in case of a negative score.

9. Experience in the gaming market:

- 1) 1 pts - in case the entity has a do- gation on the gambling market;
- 2) 0 points - where the entity does not have a gambling provision.