



School of International Arbitration

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International Arbitration Case Law

**School of International Arbitration, Queen Mary, University of London
International Arbitration Case Law**

*Academic Directors: Ignacio Torterola, Loukas Mistelis**

Award Name and Date: Olympic Entertainment Group AS v. Ukraine (PCA Case No. 2019-18) – Award – 15 April 2021

Case Report by: Sarah Lemoine**, Editor Ignacio Torterola***

Summary: Claimant brought an action for relief against Ukraine pursuant to the Estonia-Ukraine BIT (‘BIT’ or ‘Treaty’) alleging Ukraine breached the fair and equitable treatment, full protection and security, and expropriation protections in the BIT in relation to its investment in gambling facilities located in Ukraine.

Main Issues: Jurisdiction - definition of ‘investment’ ‘in accordance with Ukrainian law’ within the meaning of Article 1(1) of the BIT; treaty obligations - indirect expropriation – police powers doctrine - fair and equitable treatment – full protection and security; damages – determination of value of compensation.

Tribunal: Mr Neil Kaplan CBE QC SBS (President), Professor Michael Pryles AO PBM (Arbitrator) and Mr J. Christopher Thomas QC (Arbitrator)

Claimant's Counsel: Mr Denis Lysenko, Mr Pavlo Byelousov, Ms Myroslava Savchuk, Ms. Iryna Glushchenko (AEQUO Law Firm, Kiev); Mr. Luis Gonzalez Garcia (Matrix Chambers, London)

Respondent's Counsel: Mr Maksym Kodunov, Mr Ivan Lishchyna, Mr Michael Siroyezhko, Ms Anna Tyshchenko (Ministry of Justice of Ukraine, Kiev); Mr Timothy Otty QC (Blackstone Chambers, London); Mr Hussein Haeri, Ms Tatiana Menshenina, Ms Camilla Gambarini, Ms Diana Tarnavskaia, Ms. Natalia Faekova, Ms. Iuliia Zozulia (Withers LLP, London); Ms Yulia Atamanova (LCF Law Group, Kiev)

* Directors can be reached by email at ignacio.torterola@internationalarbitrationcaselaw.com and loukas.mistelis@internationalarbitrationcaselaw.com

** Sarah Lemoine is a Senior Associate at Clifford Chance in Frankfurt, Germany. She holds an LLB degree from the University of British Columbia, Canada, and a Master of Laws degree from the University of London. IACL’s case reports do not offer personal views but strictly reflect the content of the decision. However, in case of doubts, the views set forth herein are the personal views of the author and do not reflect those of ACICA or the IBA.

*** Ignacio Torterola is co-Director of International Arbitration Case Law (IACL) and a partner in the International Arbitration and Litigation Practice at GST LLP.

Digest:

1. Relevant Facts

Olympic Entertainment Group AS ('OEG' or 'Claimant') is a company established under the Laws of Estonia. Respondent is Ukraine ('Ukraine' or 'Respondent') (¶¶ 4,6).

OEG, through its locally incorporated company, Olympic Casino Ukraine LLC ('OCU'), developed and operated several gaming facilities in Ukraine dating back to 2003/04 (the Parties disputed when OCU was established) (¶ 16). In 2006, the Ministry of Finance of Ukraine ('MFU') issued licenses to Claimant's subsidiaries, authorising them to conduct gambling activities throughout Ukraine (¶ 20).

The underlying dispute arose out of Ukraine's enactment of the law 'On the Prohibition of Gambling Business in Ukraine' (the 'Gambling Ban Law'). In the weeks leading up to the introduction of the Gambling Ban Law on 12 May 2009, the Ukrainian Government introduced a series of measures targeting the gambling industry. In March 2009, a draft law banning gambling was introduced in Parliament (¶ 22). In May 2009, Ukraine's Cabinet of Ministers issued a decree obliging the MFU to take measures in the interest of the security of Ukrainian citizens. The MFU then issued an order suspending all gambling licenses until 7 June 2009 with immediate effect (¶¶ 24-25).

The draft Gambling Ban Law was considered by Parliament in an expedited procedure, with minimal debate. Notwithstanding a veto by the President of Ukraine, the law was approved on 11 June 2009 and entered into force on 25 June 2009 (¶¶ 28-30). In contrast with earlier draft laws related to gambling, the Gambling Ban Law imposed a full and immediate ban on the domestic gambling industry (¶¶ 22, 29). It also attached criminal responsibility to engage in the business of gambling after 25 June 2009 and did not include any provisions regarding compensation for gambling license holders (¶¶ 22, 30).

During this time, Claimant conducted negotiations with the Maxbet Group regarding the sale of Claimant's business in Ukraine. An initial purchase price of EUR 15 million for Claimant's assets was agreed but the sale did not go ahead (¶ 33).

Claimant alleged that the Gambling Ban Law forced the premature closure of its gambling operations and the commencement of liquidation proceedings for OCU and all but one of its Ukrainian subsidiaries (¶ 31). Respondent denied responsibility for Claimant's losses, arguing the liquidation proceedings had commenced before the Gambling Ban Law came into force.

After settlement negotiations between the Parties failed, Claimant brought an action for relief against Ukraine pursuant to the BIT, alleging Ukraine had breached the fair and equitable treatment, full protection and security, and expropriation protections (¶ 61).

2. Procedural History

Claimant filed a Notice of Arbitration on 5 November 2018. The Tribunal was constituted on 29 December 2018 following the appointment of the presiding arbitrator by the co-arbitrators. The first procedural meeting was held in London on 8 May 2019, following which, on 10 May 2019, the Tribunal issued Procedural Order No. 1. Claimant filed its Statement of Claim on 21 June 2019 and Respondent filed its Statement of Defence on 10 January 2020. Claimant

submitted its Statement of Reply on 23 May 2020 and Respondent filed its Rejoinder on 17 July 2020. On 1 November 2020, the Parties' respective quantum experts submitted a Joint Statement. A remote hearing on jurisdiction, merits, and quantum was held on 13-20 December 2020. Claimant and Respondent submitted their respective Post-Hearing Briefs on 12 January 2021 (Appendix 1).

3. Claimant's Position

3.1 Jurisdiction – Claimant's investments were made in compliance with Ukrainian law

According to Claimant, each asset and right comprising its investment had been made in accordance with Ukrainian legislation (¶ 46). Claimant argued that its gambling operations in Ukraine were not subject to any licensing requirement when it made its initial investment in 2004 and when, in 2006, licenses for its operations were required by law, Claimant obtained them (¶ 17). Claimant also argued that the alleged irregularity, if proven, would not have constituted a breach of a fundamental principle of Ukrainian law (¶ 47).

3.2 Respondent expropriated Claimant's investment without compensation

3.2.1 The Gambling Ban Law was an indirect expropriation

Claimant submitted that the Gambling Ban Law amounted to an indirect expropriation of its investment. According to Claimant, the Gambling Ban Law led to the revocation of OCU's valid licenses, forcing it to cease all activities in Ukraine and thereby depriving Claimant of the use and economic benefit of its investment. Such deprivation was, in Claimant's view, permanent, irreversible, and resulted in OCU's bankruptcy (¶¶ 64-66).

3.2.2 The expropriation was unlawful

According to Claimant, the expropriation was unlawful because it did not satisfy the requirements under Article 5(1) of the Treaty, according to which an expropriation must be (i) for a public purpose, (ii) carried out under due process of law, (iii) on a non-discriminatory basis, and (iv) accompanied by prompt, adequate and effective compensation (¶¶ 63, 67).

First, Claimant submitted that the expropriation was not in the public interest, with there being no evidence of any serious and immediate threat to public morals or health (¶ 68). Claimant alleged that the Gambling Ban Law was an opportunistic political manoeuvre from the Prime Minister and members of Ukrainian Parliament to gain voter support (¶ 68).

Second, Claimant submitted that the expropriation was not conducted in accordance with due process of law. As stated by Claimant, the Gambling Ban Law 'was adopted without (i) a proper debate in the Ukrainian parliament, (ii) giving prior notice to the Claimant, and (iii) regard for the industry's reasonable concerns about the draft law' (¶ 69).

Third, the expropriation was not accompanied by any compensation (¶ 70).

3.2.3 The Gambling Ban Law was not a proper exercise of police powers

According to Claimant, the Gambling Ban Law did not fulfil the strict conditions of the police powers doctrine. First, it claimed that law was not a 'bona fide regulation for the protection of

public health’ as it had been adopted for purely political reasons. To the extent the law was aimed at addressing risks to health and morality, such risks had not been properly evidenced or considered by Parliament (¶¶ 71-72). Second, Claimant argued that the Gambling Ban Law was not proportionate. Claimant noted that the law put in place a total ban on gambling, which served to increase, rather than prevent, uncontrolled and illegal gambling (¶ 73).

3.3 Respondent failed to accord Claimant’s investment fair and equitable treatment

3.3.1 Ukraine failed to provide a stable and predictable legal framework

Claimant submitted that Respondent breached its obligation under the Treaty to accord ‘favourable conditions’ for foreign investors by failing to provide a stable and predictable legal framework. Claimant argued that Respondent effectively replaced the existing legal framework governing the Ukrainian gambling sector with an entirely new one within a matter of days, with no transitional period, no advance notice, and no compensation for investors (¶ 120).

3.3.2 Ukraine failed to protect Claimant’s legitimate expectations

Claimant further submitted that Respondent breached the Treaty’s fair and equitable (‘FET’) standard by failing to protect Claimant’s legitimate expectations. According to Claimant, it expected its gambling business to run smoothly, without any legal obstacles. When the MFU issued to OCU’s subsidiaries all necessary gambling licenses in 2006, Claimant had the legitimate expectation that such licenses would remain operational and would be prolonged as provided for by law. Claimant argued that by adopting the Gambling Ban Law effectively revoking these licenses, Ukraine had frustrated its legitimate expectations (¶ 121).

3.3.3 The adoption of the Gambling Ban Law lacked transparency and due process

Claimant also argued that Respondent was not transparent and failed to respect its Respondent’s obligation to accord due process when it adopted the Gambling Ban Law. In this regard, Claimant argued that it had not been any prior notice prior to the suspension of its licenses or the adoption of the Gambling Ban Law, and that it had been forced to shut down its operations immediately when the law was finally adopted (¶ 122).

Claimant noted that the Government failed to: (i) conduct any scientific research on the public health risks associated with gambling; (ii) consult with Claimant or other investors during the debate of the draft law; (iii) properly debate the law in Parliament or explain the need for the fast-track procedure; and (iv) issue a response in relation to President’s veto (¶ 122).

3.3.4 The license suspension and gambling ban were arbitrary and unreasonable

For similar reasons to those given in connection with its claim based on lack of transparency and due process, Claimant submitted that the Gambling Ban Law and related license suspension were arbitrary and unreasonable. Claimant argued that the Gambling Ban Law was politically motivated and contradicted the Government’s policy on gambling reform. Claimant further argued that the law imposed a heavy burden on license holders, which was not necessary to achieve the proclaimed goal and served only to exacerbate the negative effects of gambling. Finally, Claimant called attention to the fact that the transitional period for the application of the ban had been removed only three days before the law had been adopted (¶ 123).

3.3.5 The Ukrainian Government acted in bad faith

Claimant submitted that the Government had acted in bad faith when it adopted the Gambling Ban Law. It pointed to negative comments made by the Prime Minister and other members of Government against the gambling industry, which, Claimant argued, exemplified their prejudice on what to do with the gambling industry.

Claimant pointed to the lack of prior notice and fast-track legislative procedure as further evidence of bad faith conduct, as well as the Government's failure to consult with Claimant about the total prohibition of gambling operations. In Claimant's view, the abrupt repeal of the existing legal framework without a transitional period showed a lack of intention to consider the impact that the ban would bring to operators with valid licenses (¶ 123).

3.4 Respondent failed to provide Claimant's investment with full protection and security

3.4.1 The full protection and security obligation extends to legal protection

Claimant averred that the obligation to provide 'full protection and security' ('FPS') extended to regulatory and legal protection in accordance with international law. This obligation, Claimant submitted, included due process and procedural propriety (¶ 134).

3.4.2 Respondent breached its FPS obligation by encouraging economic injury to Claimant's investments

Citing the inflammatory statements made by the Prime Minister and Government officials, Claimant argued that Respondent breached the FPS obligation by encouraging economic injury to its investments and further, by imposing an immediate and total prohibition on gambling without regard for the legal rights Claimant held under its valid licenses (¶¶ 135-136).

3.5 Causation and quantum

3.5.1 Standard of compensation

Invoking the principle of full reparation, as stated in the *Chorzow Factory* case, Claimant claimed full compensation for the loss of value of its investment and any other 'financially assessable damage'. In terms of the principles governing compensation for expropriation, Claimant expressed the need to differentiate between a lawful and unlawful expropriation. Accordingly, compensation for an unlawful expropriation must account not only for the loss of an asset but also the investor's loss of choice to hold the asset and sell it in the future or to invest the amount that would have been paid by the State at the time of expropriation (¶ 142).

3.5.2 Damages assessed

Claimant's quantum expert calculated Claimant's losses in the amount of EUR 12,404,000. This calculation looked at the difference between: (1) the actual scenario in which, after the introduction of the Gambling Ban Law, Claimant liquidated OCU and recovered a small proportion of its investments in Ukraine; and (2) the 'but for' scenario in which there was no gambling ban and Claimant would have continued to hold the market value of its Ukrainian operations (¶ 143). Claimant also presented an alternative compensation claim based on a lower enterprise value of OCU implied by the Maxbet offer (¶ 144).

3.5.3 Interest

Claimant requested pre- and post-award interest at the rate of 12-month LIBOR +4%, compounded annually (¶ 145).

3.5.4 Causation

Claimant denied that there was no causation between its losses and the Gambling Ban Law. It submitted that before the law, OCU was financially stable and did not have major liabilities. According to Claimant, its decision to liquidate OCU and its subsidiaries was made on 3 July 2009, after the ban came into force. Respondent's claim that the liquidation process began two weeks before the ban was adopted, was based on a typo and was thus unsubstantiated (¶ 146).

4. Respondent's position

4.1 The Tribunal does not have jurisdiction

4.1.1 Claimant did not make a qualifying 'investment' 'in accordance with Ukrainian law'

According to the Respondent, because Claimant did not obtain an operating license for its gambling businesses in Ukraine when it first entered the market, its investments were not made in accordance with the laws and regulations of the host state, as required under Article 1(1) of the BIT. Accordingly, Claimant's alleged investment in Ukraine was not a protected investment under the Treaty, and the Tribunal did not have jurisdiction (¶¶ 41-43).

4.2 The Gambling Ban Law did not amount to an expropriatory taking

4.2.1 The Gambling Ban Law was a valid exercise of the state's police powers

Respondent argued that there was no unlawful expropriation as the Gambling Ban Law was a valid exercise of the state's police powers under customary international law (¶¶ 74-75). Against this background, Respondent submitted that the Gambling Ban Law was a *bona fide* measure, which had been adopted to address the serious public health and morality issues stemming from gambling in Ukraine. It also noted that the law had enjoyed overwhelming democratic and political support, was non-discriminatory, and had been achieved with due process. Claimant was aware of previous efforts to reform the gambling sector, including draft laws prohibiting gambling, and had six weeks' notice of the draft legislation before the final version was adopted. Respondent further argued that it was not for the Tribunal to second-guess state measures that were enacted in good faith, as in the present case, where the protection of public health and morality were at stake (¶¶ 76-81).

While disagreeing that proportionality was a condition for a valid exercise of police power, Respondent argued that the Gambling Ban Law was a reasonable and proportional response to the problem of gambling. It also noted that the ban was only temporary and was replaced by a special zoning system that permitted gambling outside residential areas (¶¶ 77, 82-83).

4.3 No breach of FET standard under the Treaty

4.3.1 Claimant could not expect that regulatory regime would remain unchanged

According to Respondent, Claimant did not have any legitimate expectations that the regulatory framework applicable to its investment would remain unchanged. Respondent argued that Claimant knew of the possibility of a prohibition on gambling. It further argued that Ukraine gave no specific commitments regarding the stability of the regulatory framework. In its view, Claimant did not conduct a proper due diligence and regulatory risk assessment before entering the market and thus it assumed risk of any adverse regulatory changes (¶ 126).

4.3.2 No breach of legitimate expectations

Nor did Claimant have any legitimate expectations at the time it invested that its gambling licences would be renewed, Respondent argued, since Claimant's operations were not subject to any licensing requirement at the time. It also asserted that there was no evidence that Ukraine made any assurances regarding the renewal of OCU's gambling licenses in perpetuity (¶ 127).

4.3.3 Ukraine acted transparently and in accordance with due process

Respondent denied the claims concerning lack of transparency and due process, arguing that the advance notice and explanation of the Gambling Ban Law had been given. The law had been adopted in accordance with all applicable legislative and procedural requirements (¶ 128).

4.3.4 Ukraine did not act arbitrarily

Respondent denied that it had acted arbitrarily when it adopted the Gambling Ban Law. It submitted that the law had been adopted for a public purpose and in accordance with the rule of law. Citing the decision in *Philip Morris v. Uruguay*, Respondent also submitted that national authorities are warranted 'substantial deference' when adopting measures to address a public health problem such as gambling (¶ 129).

4.3.5 Ukraine acted in good faith

Respondent argued there a high burden of proof to demonstrate bad faith. It argued that the statements by the Prime Minister and others signalled their view of the seriousness of the public health and morality claims rather than any bias. Respondent also submitted that Claimant had notice of the gambling ban; that the State was entitled to amend its law; and that the law had been adopted in accordance with the legal framework in place in Ukraine (¶ 130).

4.4 No breach of the FPS standard

4.4.1 The FPS standard is limited to physical security

Respondent submitted that the FPS standard only extended to the duty of the host state to grant physical protection to Claimant's investment and there was no reason for the Tribunal to depart from this widely held position. Respondent further submitted that the FPS standard does not protect against the legitimate exercise of a State's police powers (¶ 137).

4.4.2 The Gambling Ban Law did not violate the FPS standard

Respondent averred that its adoption of the Gambling Ban Law was a legitimate exercise of its police powers. It also argued that statements made by government officials were limited to a single article and did not amount to harassment, much less a breach of the FPS standard (¶ 138).

4.5 Causation and quantum

4.5.1 Claimant is not entitled to compensation because its losses were not caused by the ban

Respondent argued that Claimant was not entitled to compensation because its investment was loss-making and effectively insolvent well before the Gambling Ban Law had been enacted. Respondent relied on evidence that on 9 June 2009, two weeks before the law entered into force, Claimant commenced liquidation proceedings for OCU. Respondent denied that written reference to 9 June 2009 in the annual report mentioning the decision to liquidate was merely a typo and asserted that such date had been corroborated by PWC and at a subsequent OCU shareholders' meeting. As Claimant's business would not have survived even if the ban was never adopted, there was no causation and thus quantum did not arise (¶¶ 147-150).

4.5.2 Claimant's quantification of damages is flawed

Respondent objected to Claimant's quantification of damages on several grounds. It argued that the DCF analysis underlying Claimant's primary valuation was imprecise, speculative, and inapposite as OCU was no longer a going concern at the time of the expropriation. Respondent objected to Claimant's use of the Maxbet Group's pre-due diligence offer as a reference point in Claimant's damages claim. It also argued that Claimant's expert failed to identify any comparable transactions to assess the enterprise valuation (¶¶ 151-152). According to Respondent, the only appropriate metric for compensation was the liquidation value of assets that were not recovered by Claimant, plus the prorated residual value of the licences for which payment had been made (¶¶ 157).

4.5.3 Interest

Respondent also objected to Claimant's request for interest at the rate of LIBOR + 4%, arguing that LIBOR + 2% was the standard practice and the interest rate predominantly applied by international tribunals (¶¶ 153).

5. Tribunal's analysis

5.1 Jurisdiction: Whether Claimant's investment was made in accordance with Ukrainian law

Having concluded that Claimant's investments accorded with the Treaty definition (¶¶ 49-51), the Tribunal considered whether they were made in accordance with Ukrainian law. It noted that there were no allegations or indications that Claimant's investments were made in contravention of any Ukrainian law, and concluded that Claimant's investment was made in accordance with Ukrainian law (¶¶ 53-54).

As regards the alleged illegality of Claimant's operations in Ukraine, specifically that Claimant lacked the necessary licenses when it commenced its operations, the Tribunal confirmed that such operations were not subject to the licencing requirement during the relevant period. The Tribunal considered that if the Claimant had been operating illegally, this illegality would have been discovered over the years that it operated and paid taxes (¶¶ 56-57). Even if there was any illegality, there was no breach of a fundamental principle of Ukrainian law which would preclude its jurisdiction. In the Tribunal's view, failure to have a license during the first years of its activity did not amount to a fundamental breach which should deprive Claimant of the protection of the Treaty (¶¶ 58-60).

5.2 Whether the Gambling Ban Law amounted to an expropriation of Claimant's investment

5.2.1 Whether the Gambling Ban Law was bona fide and for a public purpose

The Tribunal first addressed Respondent's invocation of the police powers doctrine. While noting that the Treaty did not expressly include the police powers doctrine, the Tribunal accepted this was a relevant rule of customary international law. Accordingly, *bona fide* regulatory acts that were (i) adopted for a public purpose, (ii) non-discriminatory, and (iii) accomplished with due process should not be considered expropriatory. Citing decisions of previous investment treaty tribunals, the Tribunal held that for the Gambling Ban Law to be a valid exercise of Respondent's police power, it must also be proportionate (¶¶ 86-90).

As to whether the Gambling Ban Law met the conditions for the police powers doctrine, the Tribunal noted that the legislators had little empirical evidence to assist in crafting an appropriate solution to the purported risks of gambling. Yet it also noted that the ban had received wide support and had been previously and extensively debated in Parliament. The Tribunal found that there was no concrete evidence that the ban was politically motivated, and it accepted that the Gambling Ban Law had been passed for legitimate reasons of public health and morality. The Tribunal thus concluded that the Gambling Ban Law had been adopted in good faith for a legitimate public purpose (¶¶ 92-95).

As to the question of proportionality, the Tribunal noted the severe impact of the law on Claimant's investments, as well as the lack of any compensatory or transitional mechanism for, and consultation with, the affected investors, which had been deprived of the opportunity to mitigate their losses. It called attention to the fact that the special zoning systems contemplated under the Gambling Ban Law had not been implemented until a year after its adoption, which contributed to the development of a shadow market outside government regulation. The Tribunal concluded the Gambling Ban Law could not be regarded as a proportionate measure and was thus not a valid exercise of the police powers doctrine (¶¶ 96-101).

5.2.2 Whether the Respondent indirectly expropriated the Claimant's investment

The Tribunal found that the Gambling Ban Law was a 'textbook example' of indirect expropriation. It cited the fact that the licenses of OCU's gambling facilities had been revoked immediately upon entry into force of the law. Claimant lost the possibility to earn a commercial return from its investments, which were dependent on the legality of gambling. The revocation of the licenses thus amounted to an indirect taking of Claimant's investments (¶¶ 106-116).

5.3 Whether the Gambling Ban Law breached the FET standard

The Tribunal took the view that the Gambling Ban Law and its effect of destroying Claimant's investment supported the conclusion that there had been a breach of the FET standard. However, in light of its decision concerning Respondent's unlawful expropriation, the Tribunal did not make any decision in relation to the alleged breach of the FET standard since it would have no bearing on the quantum or the Claimant's entitlement to its requested relief (¶ 132).

5.4 Whether the Gambling Ban Law breached the FPS standard

The Tribunal also did not examine Claimant's claim in relation to the alleged breach of the FPS standard in light of its decision on expropriation (¶ 139).

5.5 Damages

5.5.1 Standard of compensation for unlawful expropriation

The Tribunal agreed with Claimant that the Treaty only addressed compensation for lawful expropriation. It thus resorted to relevant principles of customary international law, as set in *Chorzow Factory* case, to assess damages (¶ 155).

5.5.2 Whether Claimant was already insolvent when the Gambling Ban Law entered into force

While the Tribunal accepted that Claimant's investment had financial woes at the time it was indirectly expropriated, it did not accept Respondent's submission that liquidation was inevitable. Observing that Respondent's position was based on OCU's debt to OEG under a shareholder loan that purportedly could have been called in, the Tribunal found that such loan was unlikely to have been called in, especially if it would have forced the company into liquidation since Claimant had an interest in keeping its investment in Ukraine afloat. The Tribunal also noted that at the time the ban was adopted, OCU was recovering and was even profitable when measured at the level of EBITDA (¶¶ 156-166).

5.5.3 Quantum

Based on the evidence before it, the Tribunal concluded that, had the ban not been implemented, OCU would have continued along with hopes of improved performance but without a real prospect of repaying the loan owed to its parent. At the same time, OCU had assets and therefore still held some value. Accordingly, the Tribunal rejected Respondent's approach of assessing Claimant's investment on liquidation value or book value. Instead, it reasoned that the assessment of the investment must include its fair market value, including expected future performance. The Tribunal also did not accept Claimant's valuation of its investment, since it did not discount various matters, including the significant shareholder loan made to OCU, which placed it in a difficult financial situation, (¶ 167) and the fact that the gambling licenses were due to expire in 2011 (¶¶ 172-173).

The Tribunal considered that the offer made by the Maxbet Group of USD 15 million was a useful starting point for valuing Claimant's investment, subject to some deduction to account for the various uncertainties concerning this offer as well as the value of assets recovered by Claimant (¶¶ 174-175, 179). Noting that there was no scientific certainty in valuing damages, the Tribunal awarded Claimant compensation in the amount of EUR 7,500,000 (¶¶ 180-182).

The Tribunal also awarded Claimant pre-award and post-award interest to ensure full reparation. It considered Claimant's request for interest at the rate of 12-month LIBOR +4%, compounded annually, was reasonable and in step with the practice of various tribunals (¶ 185).

6. Costs

The Tribunal affirmed the general principle that costs follow the event, subject to its discretion take account of the Parties' conduct and the amount awarded compared to the amount claimed. It ordered Respondent to bear the full costs and expenses incurred in connection with the arbitration, including Claimant's legal costs and expenses, as well as simple interest at a rate of LIBOR + 4% per annum from the date of the award until payment (¶¶ 196-198).