

**APPROVED**

By the General Director on May 14, 2015

Order No. 1-1/15-021

## **GUIDELINES FOR FULFILLING REQUIREMENTS FOR ADVERTISING OF GAMBLING**

### **1. Competence**

- 1.1. According to clause § 13 (1) of the Statutes of the Consumer Protection Board, the main task of the Board is to conduct national supervision of the compliance to requirements pursuant to the legislation that regulates the field of the Consumer Protection Board.
- 1.2. According to clause § 14 (10) of the Statutes of the Consumer Protection Board, the Board has the right to issue, within its fields of competence, advisory guidelines to comply with the statutory requirements of consumer protection.
- 1.3. According to subsection § 30 (1) of the Advertising Act (hereinafter the AdA), the Consumer Protection Board conducts supervision over compliance with the corresponding act and requirements established on the basis of this act, excluding those established in § 14, 15 and 29<sup>1</sup> of the current act.

### **2. Objective and scope of application**

- 2.1. These guidelines have been compiled with the objective of explaining and clarifying the requirements of gambling advertisement that have been established in § 29<sup>2</sup> of the AdA, in order to ensure uniform compliance with the aforementioned requirements by undertakings.
- 2.2. The guidelines were compiled on the basis of [the Advertising Act](#) (RT I, 12.03.2015, 84), the Explanatory Memorandum of the Advertising Act (Explanatory Memorandum 747 accompanying the Draft Act amending the Gambling Act, Media Services Act, Advertising Act with annexes), [the Gambling Act](#) (RT I, 04.03.2015, 12), [the Trading Act](#) (RT I, 12.07.2014, 59), opinions of the Advertisement Council and views established during the supervisory practice of the Consumer Protection Board.
- 2.3. Statutory requirements should be taken into account when applying the guidelines. Legislative provisions should be the basis in the case of statutory requirements that are mandatory.
- 2.4. The guidelines are recommendatory in character and subject to be complemented, if necessary, to ensure the existence of a relevant document at a fixed time.

### **3. Relevant provisions**

- 3.1. Pursuant to clause § 2 (1) 3) of the AdA, advertising means information which is made public in any generally perceived form for a charge or without charge for the purpose of increasing the provision of services or the sale of goods, promoting an event or directing the conduct of a person in public interests.
- 3.2. Pursuant to subsection § 2 (2) of the AdA, the following is not deemed advertising:

- 1) information concerning the goods, services or the conditions of sale thereof and information specified in clause 2) of this subsection provided at the location of business or professional activities where the goods are sold or the services are provided;
  - 2) marking of a location of business or professional activities with its name, type, the time of the sale of goods or provision of services, the name of the person, the trade mark and the domain name on a building where the location of business or professional activities is situated and at the entrance of the location of business or professional activities;
  - 3) marking of a location of business or professional activities, which is situated outside a building, with the information specified in clause 2) of this subsection;
  - 4) marking of a vehicle used in the business or professional activities of a person with the name, contact details, trade mark, domain name and area of activity of the person;
  - 5) Labelling on the sales packaging of goods. Advertising placed on or attached to the sales packaging is not deemed to be labelling. A sales packaging is deemed to be the same as within the meaning of the Packaging Act;
  - 6) The name and trade mark of the sponsor disclosed in the sponsor's announcement and information concerning the material support granted thereby.
- 3.3. Pursuant to clause § 2 (7) of the Trading Act (hereinafter the TA), within the meaning of this act, e-trade means the offer for sale or sale of goods or services on the Internet without the parties being simultaneously physically present.
- 3.4. Pursuant to subsection § 14 (11) of the TA, in the case of e-trade, the address of the website is deemed to be the place of business.
- 3.5. Pursuant to subsection § 3 (1) of the AdA, advertising shall, given ordinary attention, be clearly distinguishable from other information and its content, design and presentation shall ensure that it is recognised as advertising.
- 3.6. Pursuant to subsection § 3 (2) of the AdA, advertising shall contain, in a clearly distinguishable manner, the name of the person placing advertising, the Estonian or European Community trade mark thereof which is under registration or has been registered or the domain name thereof.
- 3.7. Pursuant to clause § 3 (4) 1) of the AdA, advertising shall not be contrary to good morals and customs.
- 3.7. Pursuant to clause § 3 (4) 11) of the AdA, advertising shall not provide inaccurate information.
- 3.9. Pursuant to subsection § 29<sup>2</sup> (1) of the AdA, advertising of gambling, a gaming location and organiser of gambling (hereinafter advertising of gambling) is prohibited if the organiser of gambling has no operating permit required under the Gambling Act.
- 3.10. Pursuant to subsection § 29<sup>2</sup> (2) of the AdA, gambling, including commercial lottery, gaming location and organiser of gambling are deemed to be the same as within the meaning of the Gambling Act.
- 3.11. Pursuant to subsection § 2 (1) of the Gambling Act (hereinafter the GA), gambling is a game that meets all the following criteria:
- 1) it is a precondition for participating in a game that the player makes a bet;
  - 2) the player may win a prize as a result of the game;
  - 3) the outcome of the game is partly or fully determined by an activity based on chance or depends on the occurrence of a previously unknown event.

- 3.12. Pursuant to § 3 of the GA, the types of gambling are:
- 1) games of chance – games, the outcome of which depends on chance and which are played by means of a mechanical or electronic device or by mediation of the organiser of the game; 2) lotteries – games, the outcome of which depends on chance, whereas the prize pool constitutes up to 80 percent of the selling price of the circulation of the lottery tickets, and the outcome of the game is not determined more than three times per twenty-four hours or it is determined by opening the ticket field on the lottery ticket;
  - 3) tolos – games, the outcome of which depends on whether an event bet on by the player occurs or does not occur or how it occurs, whereas the event bet on by the player is beyond the control of the gambling operator, the winning of a prize depends on whether the bet turns out to be true or not and the amount of the prize depends on the amount of the bet and the winning coefficient determined before the making of the bet (betting) or percentage of the total amount of the bets as determined by the gambling operator, the number of people who bet correctly and the amount of their bets (totaliser);
  - 4) games of skill – games, the outcome of which depends predominantly on the physical skills or abilities or knowledge of the player, and which are played by means of a mechanical or electronic device.
- 3.13. Pursuant to § 6 of the GA, a commercial lottery is a classical lottery or an instant lottery organised by a provider of goods or services for the promotion of the sales of goods or services or for advertising the goods, services or provider thereof.
- 3.14. Pursuant to the sentence 1 in subsection § 27 (1) of the GA, a gaming location for a game of chance, toto or game of skill may be opened only at an address, for which the local rural municipality government or city government has granted a written consent before the operating permit is applied for.
- 3.15. Pursuant to subsection § 8 (1) of the GA, a gambling operator is a person engaged in the organisation of gambling.
- 3.16. Pursuant to subsection § 29<sup>2</sup> (3) of the AdA, advertising of gambling shall not contain an incitement to participate in gambling or visit a gaming location or information which may suggest that gambling contributes towards social success.
- 3.17. Pursuant to subsection § 29<sup>2</sup> (4) of the AdA, advertising of gambling shall include the textual warning: "*Tähelepanu! Tegemist on hasartmängu reklaamiga. Hasartmäng pole sobiv viis rahaliste probleemide lahendamiseks. Tutvuge reeglitega ja käituge vastutustundlikult!*" ["Attention! This is advertising of gambling. Gambling is not a suitable means for solving financial problems. Examine the rules and behave responsibly!"]. The warning shall, given ordinary attention, be noticeable, understandable and clearly distinguishable from other information.
- 3.18. Pursuant to subsection § 29<sup>2</sup> (5) of the AdA, advertising of games of chance is prohibited except:
- 1) on the premises where a games of chance is organised;
  - 2) on board a water craft or aircraft used for international carriage of passengers;

- 3) in the building of a passenger terminal of an airport or port which provides international regular services;
  - 4) in a hotel where gaming premises for games of chance are located;
  - 5) on the website of an organiser of games of chance;
  - 6) advertising communicated by post, e-mail or phone provided that the client has subscribed to it, it is communicated only to the client's own postal or e-mail address or the telephone number used by the client and the client is able to terminate the communication of advertising at any time by notifying the organiser of the games of chance of one's wish.
- 3.19. Pursuant to subsection § 29<sup>2</sup> (6) of the AdA, advertising of totos is prohibited:
- 1) in and on the buildings and territories in the use of pre-school child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps and youth project camps and in close proximity thereof, on websites directed at children, at the place and during the time of holding an event which is mostly directed at children and on the tickets for such event;
  - 2) in television and radio programmes;
  - 3) on the front and back covers of newspapers or magazines, unless published together with the sponsor's announcement;
  - 4) as outdoor advertising, unless published together with the sponsor's announcement.
- 3.20. Pursuant to subsection § 29<sup>2</sup> (7) of the AdA, advertising of games of skill is prohibited:
- 1) in and on the buildings and territories in the use of pre-school child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps and youth project camps and in close proximity thereof, on websites directed at children and before and during television and radio programmes which are mostly directed at children;
  - 2) on the front and back covers of newspapers or magazines, unless published together with the sponsor's announcement;
  - 3) as outdoor advertising, unless published together with the sponsor's announcement.
- 3.21. Pursuant to subsection § 29<sup>2</sup> (8) of the AdA, advertising of lotteries is prohibited in and on the buildings and territories in the use of pre-school child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps and youth project camps and in close proximity thereof, on websites directed at children, before and during television and radio programmes which are mostly directed at children and at the place and during the time of holding an event which is mostly directed at children and on the tickets for such event.
- 3.22. Pursuant to subsection § 29<sup>2</sup> (9) of the AdA, a trade mark of an organiser of totos, games of skill or lotteries may be exhibited only if it conforms to the provisions of subsection (3) of this section. A trade mark of an organiser of games of chance which does not express a game of chance, a gaming location of a games of chance or a chance of winning in words or depict them in picture may be exhibited outside the places specified in subsection (5) of this section provided that the trade mark conforms to the provisions of subsection (3) of this section. Communication of a trade mark of an organiser of gambling to the public is prohibited at the places and during the times specified in clause (7) 1) of this section.

- 3.23. Pursuant to subsection § 29<sup>2</sup> (10) of the AdA, communication of information on commercial lotteries to the public is not deemed to be advertising of gambling.
- 3.24. Pursuant to subsection § 29<sup>2</sup> (11) of the AdA, The provisions concerning advertising of gambling apply to advertising of the activities taking place on gaming premises.
- 3.25. Pursuant to subsection § 30 (8<sup>1</sup>) of the Media Services Act, a gambling operator may exhibit only the name and trade mark of the company in the sponsored audiovisual media service or programme. The conditions arising from subsection 29<sup>2</sup> (9) of the AdA apply upon exhibiting a trade mark. A media service or programme shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

#### **4. Amendments in advertising of gambling**

The new regulation for advertising of gambling came into force as a whole as of June 1, 2015, thereby repealing the previous regulation. Pursuant to the Explanatory Memorandum No. 747 of the Advertising Act (hereinafter the explanatory memorandum), amendments were made to the general requirements established for advertising of gambling, which are further specified by restrictions that depend on the type of game.

The Court of Justice, found already in 2007, that “it is possible that a policy of controlled expansion in the betting and gaming sector may be entirely consistent with the objective of drawing players away from clandestine betting and gaming – and, as such, activities which are prohibited – to activities which are authorised and regulated. In order to achieve that objective /.../ authorised operators must represent a reliable, but at the same time attractive, alternative to a prohibited activity. This may as such necessitate the offer of an extensive range of games, advertising on a certain scale and the use of new distribution techniques” (Placanica et. al, joined cases C-338/04, C-359/04 and C-360/04, clause 55).

According to the explanatory memorandum, it is necessary establish efficient measures that would focus on notifying the players and providing them with a period of reflection. In accordance with these considerations and simultaneously with the implementation of additional measures that are meant for protecting the players, advertising restrictions on lighter gambling games (such as lotteries, totes and games of skill) are reduced.

With the repeal of § 21 of the AdA, § 29<sup>2</sup> came into force. Considering the contents of the new section, it was transferred from chapter “Goods and services the advertising of which is prohibited” to chapter “Restrictions to advertising goods and services”.

**5. Requirements to advertising of gambling in § 29<sup>2</sup> of the Advertising Act** 5.1. An organiser of gambling has to have an operating permit to advertise gambling. Advertising of gambling, a gaming location and organiser of gambling (hereinafter advertising of gambling) is prohibited if the organiser of gambling has no operating permit required under the Gambling Act (subsection § 29<sup>2</sup> (1) of the AdA). Therefore, if an organiser of

gambling has an operating permit as required in the Gambling Act, they are generally allowed to advertise. However, additional requirements and restrictions apply to various types of gambling.

5.2. Gambling, including commercial lottery, gaming location and organiser of gambling are deemed to be the same as within the meaning of the Gambling Act (subsection § 29<sup>2</sup> (2) of the AdA): gambling subsection § 2 (1) of the GA, including types of gambling § 3 of the GA, the definition of commercial gambling in § 6 and the definition of organiser of gambling subsection § 8 (1). The definition of a gaming location has also been established in the Gambling Act.

Advertising of gambling shall not contain an incitement to participate in gambling or visit a gaming location or information which may suggest that gambling contributes towards social success (subsection § 29<sup>2</sup> (3) of the AdA).

As such advertising shall not contain an incitement to participate in gambling or visit a gaming location, clear directing targeted at persons is prohibited. Prohibited incitement refers to the use of imperative mood, but in some cases also that of superlatives and other inviting features. For example, the phrases alike the following are prohibited:

- come play, come try, come see, try out, visit the gaming location, ask/enquire from the gaming location, play now, participate in the game;
- (imperative versions of) buy, use, take, win;
- be the first, super offer, awesome games, amazing prizes.

Incitements to behave responsibly (incl. the compulsory statement, subsection § 29<sup>2</sup> (4) of the AdA) are not deemed prohibited. This specification applies to the advertising of all game types, locations and organisers in all channels.

How to define “information which may suggest that gambling contributes towards social success” will be determined during practice. Communicating information that creates a link between gambling and achieving great results on first try or increasing existing results in any aspect of social importance should definitely be refrained from in advertising of gambling. For example, it is prohibited to provide information in advertising that creates an impression of a link between gambling and increase in friendships, sexuality, wealth, etc.

5.4. Advertising of gambling shall include the textual warning: "Tähelepanu! Tegemist on hasartmängu reklaamiga. Hasartmäng pole sobiv viis rahaliste probleemide lahendamiseks. Tutvuge reeglitega ja käituge vastutustundlikult!" ["Attention! This is advertising of gambling. Gambling is not a suitable means for solving financial problems. Examine the rules and behave responsibly!"]. The warning shall, given ordinary attention, be noticeable, understandable and clearly distinguishable from other information (subsection § 29<sup>2</sup> (4) of the AdA). Variations and abbreviations in the wording of the warning are prohibited.

As a general rule, this warning has to be added to each gambling advertisement separately. The only exception concerns websites – one warning on the homepage of an organiser of gambling is sufficient provided that the warning is clearly visible, comprehensible and clearly differentiated from other information. Therefore,

organisers of gambling do not have to add the warning to each advertising banner and area separately.

If a website has several gambling advertising banners outside of the homepage of the organiser of gambling, every banner has to have a separate warning on it. The aforementioned requirement has a specification for flash banners where pictures alter without any additional clicks from the consumer, i.e. there is no clicking to reach another website. In the case of such flash banners, it is sufficient if the warning is included in one frame only. However if there is a final stop-frame, then that has to be the one with the warning. Therefore, stopping on a final stop-frame is not allowed in the case of flash banners if that final frame does not include the warning.

In addition, we would like to direct the attention of organisers of gambling, persons publicising advertising and person producing advertising to the last sentence of this provision “the warning shall, given ordinary attention, be noticeable, understandable and clearly distinguishable from other information”, which has been problematic in the case of other similar provisions of the Advertising Act. Namely, the aim of the warning is to direct the attention of an ordinary consumer to the important aspects of gambling that result from the specifics of gambling services. Thus, such information has to be noticeable given ordinary attention and the warning should be presented proportionally to the whole advertisement, in a reasonable format and font and, in the case of a commercial video, of a necessary length so that the consumer would realistically be able to understand the information provided.

The target group of advertising of gambling is very diverse so it is important that the warning would be located and read without much effort and that it would be clearly understood by an average consumer. The warning should definitely be presented in the same direction as the main text and in a font size that supports clear readability and visibility of the incitement. In the case of television advertising, the screen time of the warning has to be checked to ensure that the average consumer who sees the advertisement would be able to read the warning in its entirety. It is recommended to keep the background of the warning a single colour so that the maximum readability could be guaranteed. The text of the warning should be kept larger rather than smaller so that there would be less chance of problems occurring when reading it.

A definite font size cannot be fixed here as readability and proportions depend on a specific advertisement, font type, colour and other design combinations. The comprehensibility of the warning should be verified before disclosing the advertising material to the public (e.g. in the case of television advertising, it should be checked on a television screen from a reasonable distance; print advertising should be checked with a sample printed out in its original size). Seeing the advertising design on a computer screen only does not provide a proper overview as, in the case of television advertising, the computer screen is not placed at the same distance from the viewer as the television screen, and in the case of print advertising, a lot depends on the final result of printing and the actual size of posters. The Consumer Protection Board advises to keep the warning as big as the smallest reasonable font size of the rest of the advertising text, so that the compulsory warning would not be overshadowed by the advertising text and so that it would be proportional to the rest of the advertisement.

5.5. Advertising of games of chance is generally prohibited. Advertising of games of chance is allowed as an exception:

- 1) on the premises where a games of chance is organised;
- 2) on board a water craft or aircraft used for international carriage of passengers;
- 3) in the building of a passenger terminal of an airport or port which provides international regular services;
- 4) in a hotel where gaming premises for games of chance are located;
- 5) on the website of an organiser of games of chance;
- 6) advertising communicated by post, e-mail or phone provided that the client has subscribed to it, it is communicated only to the client's own postal or e-mail address or the telephone number used by the client and the client is able to terminate the communication of advertising at any time by notifying the organiser of the games of chance of one's wish (subsection § 29<sup>2</sup> (5) of the AdA).

Pursuant to clause § 3 1) of the GA, games of chance are games, the outcome of which depends on chance and which are played by means of a mechanical or electronic device or by mediation of the organiser of the game;

In the past gambling was subject to uniform requirements, according to the new regulation, the requirements differ for different types of gambling. Advertising of games of chance is the case when the advertisement refers to a game, the outcome of which depends on chance and which are played by means of a mechanical or electronic device or by mediation of the organiser of the game (incl. games organised on gaming machines and gaming tables, such as poker, blackjack, roulette, baccarat). Therefore, references to a card game can turn a specific advertisement into an advertisement of a game of chance. Card suits can be considered as a reference to a card game.

The regulation of games of chance has changed only concerning clause 6, which should be explained here. According to the explanatory memorandum, customers can order notifications from an organiser of games of chance to their email address, via post, or text messages; these notifications include information about new campaigns and customer offers, etc. However, the customer has to be able to terminate their order of such newsletters. Pursuant to the wording of the provision, a customer notification is allowed only if it complies with all the requirements in clause 6: the customer has ordered it themselves, it can be ordered to be delivered only to the personal communication means of the customer and the sending of newsletters will be halted by the organiser of games of chance immediately after receiving a corresponding message from the customer. Client means a consumer within the meaning of the Consumer Protection Act, or a person who is not a consumer but wishes to enter into a transaction or concludes a transaction with a trader. Thus, the term *client* is somewhat wider than the term *player*, as it includes persons who have other business relations with an organiser of gambling and therefore an interest in receiving information about the activities of the organiser of gambling.

5.6. In general, advertising of totos is allowed, however, subsection § 29<sup>2</sup> (6) of the AdA establishes a list of important restrictions concerning situations where advertising of totos is prohibited:

- 1) in and on the buildings and territories in the use of pre-school child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps and youth project camps and in close proximity thereof, on websites directed at children, at the place and during the time of holding an event which is mostly directed at children and on the tickets for such event; 2) in television and radio programmes;
- 3) on the front and back covers of newspapers or magazines, unless published together with the sponsor's announcement;
- 4) as outdoor advertising, unless published together with the sponsor's announcement.

Pursuant to clause § 3 (3) of the GA, totos are games, the outcome of which depends on whether an event bet on by the player occurs or does not occur or how it occurs, whereas the event bet on by the player is beyond the control of the gambling operator, the winning of a prize depends on whether the bet turns out to be true or not and the amount of the prize depends on the amount of the bet and the winning coefficient determined before the making of the bet (betting) or percentage of the total amount of the bets as determined by the gambling operator, the number of people who bet correctly and the amount of their bets (totaliser);

The requirements for tot advertising are generally understood unambiguously and depending on the location of disclosure, wither prohibited or allowed as a whole, however, pursuant to clause § 29<sup>2</sup> (6) 3-4) of the AdA, photo advertising of totos is allowed on the front and back covers of magazines and as outdoor advertising if such advertising is disclosed together with a sponsor's announcement. Pursuant to clause § 2 (2) 6) of the AdA, a sponsor's announcement includes the name and trade mark of the sponsor disclosed in the sponsor's announcement and information concerning the material support granted thereby. Therefore, in a sponsor's announcement, it is advisable to disclose, in writing, the contents of the announcement (e.g. company X supports company Y), the name of the sponsor (company X), the trade mark of the sponsor (trade mark A of company X) and information about providing financial support (financial support in the sum of xxxxx euros). At the very least, the sponsor's announcement shall clearly and unambiguously state who supports whom (incl. name of the company or trade mark). A sponsor's announcement has to be included in the advertisement or be closely linked to it. In the case of publishing a sponsor's announcement, the sponsorship has to be valid and be verifiable.

Newspapers and magazines are treated separately for each separate copy. So that both the main edition and a special edition (e.g. the business special), that are generally between the same covers, but could still be separated, are generally treated as individual publications and so are their front and back covers.

It is important to differentiate between purchasing advertising, e.g. on the front cover of a newspaper and sponsoring a newspaper (providing financial support). Buying advertising space on the front cover of a newspaper is not similar to sponsoring a newspaper. The person placing the advertising has to be able to provide proof of their sponsorship if necessary (e.g. with a sponsorship agreement). Additional sponsorship requirements have been established in § 30 of the Media Services Act (hereinafter the MSA). Pursuant to subsection § 30 (8<sup>1</sup>) of the MSA, a gambling operator may exhibit only the name and trade mark of the company in the sponsored audiovisual media service or programme. The conditions arising from subsection 29<sup>2</sup> (9) of the AdA

apply upon exhibiting a trade mark. A media service or programme shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

5.7. In general, advertising of games of skill is allowed, however, subsection § 29<sup>2</sup> (7) of the AdA establishes a list of important restrictions concerning situations where advertising of games of skill is prohibited:

- 1) in and on the buildings and territories in the use of pre-school child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps and youth project camps and in close proximity thereof, on websites directed at children and before and during television and radio programmes which are mostly directed at children;
- 2) on the front and back covers of newspapers or magazines, unless published together with the sponsor's announcement;
- 3) as outdoor advertising, unless published together with the sponsor's announcement.

Pursuant to clause § 3 (4) of the GA, games of skill are games, the outcome of which depends predominantly on the physical skills or abilities or knowledge of the player, and which are played by means of a mechanical or electronic device.

Similarly to the requirements of advertising of toots, advertising of games of skill is allowed on the front or back cover of newspapers or magazines and as outdoor advertising only if it is published with a sponsor's announcement (see requirements in the previous clause).

5.8. Advertising of lotteries is generally allowed. As an exception, advertising of lotteries is prohibited in and on the buildings and territories in the use of pre-school child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps and youth project camps and in close proximity thereof, on websites directed at children, before and during television and radio programmes which are mostly directed at children and at the place and during the time of holding an event which is mostly directed at children and on the tickets for such event (subsection § 29<sup>2</sup> (8) of the AdA).

Advertising of lotteries is generally allowed in other places and during other times, however the organiser of gambling has to have an operating permit in order to communicate advertising to the public (subsection § 29<sup>2</sup> (1) of the AdA); Advertising of gambling shall not contain an incitement to participate in gambling or visit a gaming location or information which may suggest that gambling contributes towards social success (subsection § 29<sup>2</sup> (3) of the AdA). *Tegemist on hasartmängu reklaamiga. Hasartmäng pole sobiv viis rahaliste probleemide lahendamiseks. Tutvuge reeglitega ja käituge vastutustundlikult!* ["Attention! This is advertising of gambling. Gambling is not a suitable means for solving financial problems. Examine the rules and behave responsibly!"] (subsection § 29<sup>2</sup> (4) of the AdA).

Pursuant to clause § 21 (5) 2) of the AdA that existed previously, disclosing information about the rules of the organised lottery, prize pool and potential winnings is not deemed advertising of gambling, neither is disclosing information on how the income from organising the lottery is used, or about the winning tickets, winning

combinations and winnings of past draws. This provision was left out of the amendment of the Advertising Act that came into force on 01.06.2015. Therefore, an organiser of a lottery should, before disclosing information (incl. rules of the lottery, prize pool, potential winnings, information on how the income from organising the lottery is used, on the winning tickets, winning combinations and winnings) analyse whether it can be deemed advertising in the definition of clause § 2 (1) 3) of the AdA. If it can be deemed advertising, it has to comply with all requirements of the advertising Act.

Pursuant to clause § 3 (2) of the GA, lotteries are games, the outcome of which depends on chance, whereas the prize pool constitutes up to 80 percent of the selling price of the circulation of the lottery tickets, and the outcome of the game is not determined more than three times per twenty-four hours or it is determined by opening the ticket field on the lottery ticket.

Pursuant to clause § 2 (5) 3) of the GA, the requirements provided by the Gambling Act are not applied to lotteries with the value of the prize pool of up to 1000 euros. However, such lottery is still deemed gambling within the meaning of the Gambling Act. Pursuant to subsection § 29<sup>2</sup> (2) of the AdA, gambling is considered within the meaning of the Gambling Act. As lotteries with the value of the prize pool of up to 1000 euros are deemed gambling, they are subject to all requirements of the Advertising Act.

5.9. Exhibiting trade marks Pursuant to subsection § 29<sup>2</sup> (9) of the AdA, a trade mark of an organiser of totos, games of skill or lotteries may be exhibited only if it conforms to the provisions of subsection (3) of this section. Therefore, such trade mark shall not contain an incitement to participate in gambling or visit a gaming location or information which may suggest that gambling contributes towards social success.

Advertising of games of chance is strictly prohibited in aforementioned instances. A trade mark of an organiser of games of chance which does not express a game of chance, a gaming location of a games of chance or a chance of winning in words or depict them in picture may be exhibited outside the places specified in the aforementioned list of places, provided that such trade mark shall not contain an incitement to participate in gambling or visit a gaming location or information which may suggest that gambling contributes towards social success.

Disclosing the trade mark of an organiser of gambling is prohibited in and on the buildings and territories in the use of pre-school child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps and youth project camps and in close proximity thereof, on websites directed at children and before and during television and radio programmes which are mostly directed at children;

The Advertisement Council has expressed its opinion during a meeting on October 2, 2014, which states that if additional shapes that are not part of the trade mark have been disclosed in the background of the trade mark, it is no longer a disclosing of a trade mark as the design of the trade mark has already been infringed. If the information disclosed by the organiser of gambling would be identical to the design of

the trade mark that they have submitted to the Estonian Patent Office, then it would be an instance of exhibiting a trade mark. According to the Consumer Protection Board, disclosing information further than the trade mark is deemed as advertising.

In conclusion, it is vital to differentiate between advertising of gambling and exhibiting the trade mark of an organiser of gambling. If only a trade mark is exhibited, it is not necessary to provide the warning defined in subsection § 29<sup>2</sup> (3) of the AdA.

- 5.10. Pursuant to subsection § 29<sup>2</sup> (10) of the AdA, communication of information on commercial lotteries to the public is not deemed to be advertising of gambling. In the case of commercial lotteries, previously existing regulations apply.

Pursuant to § 6 of the GA, a commercial lottery is a classical lottery or an instant lottery organised by a provider of goods or services for the promotion of the sales of goods or services or for advertising the goods, services or provider thereof.

The Consumer Protection Board is often addressed with regard to entertaining consumer games and commercial lotteries; these inquiries consist of the consumer complaints, as well as the questions asked by entrepreneurs. Thus, the Board has prepared these [Guidelines for an organiser of consumer games](#), giving an overview of the most important issues to be kept in mind upon organising various consumer games. In addition, it is advisable to get acquainted with the Guidelines .

- 5.11. Similarly to the earlier regulation, provisions concerning advertising of gambling apply to advertising of the activities taking place on gaming premises. Therefore, stricter rules apply to advertising events (e.g. entertainment or charity events, restaurant or fashion evenings, etc.) that are held in casinos or other gambling locations.
- 5.12. Marking of a gambling location, which may include a name of the company, trade mark, type and name of the gambling location, domain name and opening hours, is not deemed to be advertising of gambling. This marking can be on the building in which the gambling location is situated, but also at the entrance and simultaneously in one of both of the aforementioned places. The entrance of the gambling location can also be inside the building (clause § 2 (2) 2) of the AdA). Marking of a vehicle used in the business or professional activities of a person with the name, contact details, trade mark, domain name and area of activity of the person, is also not deemed to be advertising of gambling (clause § 2 (2) 4) of the AdA); Any information further than that is, however, deemed to be advertising of gambling.

## **6. Summary of the main requirements for gambling advertising**

- 6.1. Advertising of gambling is allowed when the organiser of gambling has an operating permit as required in the Gambling Act. However, there are definite restrictions that apply for this kind of advertising.
- 6.2. Advertising of gambling shall not contain an incitement to participate in gambling or visit a gaming location or information which may suggest that gambling contributes towards social success (see also clause 5.3.).
- 6.3. Advertising of gambling shall include the textual warning: "Tähelepanu! Tegemist on hasartmängu reklaamiga. Hasartmäng pole sobiv viis rahaliste probleemide

*lahendamiseks. Tutvuge reeglitega ja käituge vastutustundlikult!*" ["Attention! This is advertising of gambling. Gambling is not a suitable means for solving financial problems. Examine the rules and behave responsibly!"]. The warning shall, given ordinary attention, be noticeable, understandable and clearly distinguishable from other information. Variations and abbreviations in the wording of the warning are prohibited (see also clause 5.4.).

6.4. There are different restrictions for different types of advertising concerning where and when certain types of gambling can be advertised. The requirements for advertising games of chance, games of skill and lotteries differ significantly and permissibility has to be evaluated for each advertisement separately. When evaluating advertising, the first thing to do is determine the type of gambling advertising and then go over the corresponding requirements that have been established in subsection § 29<sup>2</sup> (5) of the AdA.

8.

6.5. Communication of the trade mark of an organiser of gambling to the public is prohibited in and on the buildings and territories in the use of pre-school child care institutions, basic schools, upper secondary schools, vocational educational institutions, hobby schools, permanent youth camps and youth project camps and in close proximity thereof, on websites directed at children and before and during television and radio programmes which are mostly directed at children;

A trade mark of an organiser of a toto, game of skill or a lottery is allowed to be exhibited to the public only if the trade mark does not contain an incitement to participate in gambling or visit a gaming location or information which may suggest that gambling contributes towards social success.

Any kind of trade marks of organisers of gambling can be exhibited in places where advertising of gambling is allowed (subsection § 29<sup>2</sup> (5) of the AdA). A trade mark of an organiser of games of chance which does not express a game of chance, a gaming location of a games of chance or a chance of winning in words or depict them in picture may be exhibited outside the places specified in the aforementioned list of places with some restrictions, provided that such a trade mark shall not contain an incitement to participate in gambling or visit a gaming location or information which may suggest that gambling contributes towards social success.

6.6. In certain cases, disclosing advertising to the public is allowed only if it is accompanied by a sponsor's announcement (clauses § 29<sup>2</sup> (6) 3-4), (7) 2-3) of the AdA). In that case, the sponsor's announcement has to be included in the advertisement or be closely linked to it. A sponsor's announcement has to be correct and verifiable. In a sponsor's announcement, it is advisable to disclose its contents (e.g. company X supports company Y), the name of the sponsor (company X), the trade mark of the sponsor (trade mark A of company X) and information about providing financial support (financial support in the sum of xxxxx euros). At the very least, the sponsor's announcement shall clearly and unambiguously state who supports whom (incl. name of the company or trade mark).

6.7. In addition to the requirements of advertising of gambling, the general requirements of the Advertising Act should be adhered to as well. For example, advertising shall, given

ordinary attention, be clearly distinguishable from other information and its content, design and presentation shall ensure that it is recognised as advertising.

Advertising shall also contain, in a clearly distinguishable manner, the name of the person placing advertising, the Estonian or European Community trade mark thereof which is under registration or has been registered or the domain name thereof. Advertising shall not be contrary to good morals and customs, neither shall it provide untruthful information.

## **7. Entry into force**

The guidelines shall enter into force for all the above clauses on June 1, 2015.