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■ GAMING, RESORTS & TOURISM

Integrated Resort Promotion Law (Casino Law) Approved by the Diet of Japan

I. Introduction

On the 15th of December 2016, the bill concerning the Law on Promotion of the Development of Specified Integrated Resort Areas (the ‘IR Promotion Law’) was finally approved in the extraordinary session of the 192nd Diet of Japan. In order to secure its passage into law, the following amendments were made to the bill’s original form:

- (i) the Japanese government shall take measures necessary to prevent problem gambling; and
- (ii) necessary amendments shall be made within 5 years after the law becomes effective.

In addition, detailed supplemental resolutions regarding the IR Promotion Law were passed in both the House of Representative and the House of Councillors.

In December 2013, an almost identical bill concerning gambling and the operation of casino facilities in Japan was introduced to the Diet by bipartisan pro-casino Diet members. However it was not able to be passed at that time due to the deep-rooted concerns of opposition parties and individual politicians (including some members of the ruling party) over money-laundering or problem gambling issues. Due to the same reasons, deliberation of the current bill was significantly prolonged, delaying passage of the bill until it was finally passed in the Diet on the above-mentioned date.

II. The Impact of the IR Promotion Law on the Current Status of Gambling and Casino Facilities in Japan

Unless specifically permitted by law, gambling and lotteries are classified as criminal activities in Japan under chapter 23 (articles 185 to 187) of the Japanese penal code (law number 45 of 1907, as amended). As a result, for decades, only

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horse racing, bicycle racing and other particular forms of racing and lotteries operated by public organizations have been formally permitted in Japan.

The IR Promotion Law has been drawing much public attention because it will formally allow the private sector to legally develop and operate gambling facilities for the first time in modern Japan. However, as with the legalization of casinos in Singapore in 2006, the main purpose of the IR Promotion Law is not to legalize gambling. Rather, its purpose is to promote international-standard tourism, stimulate local economies and improve the financial strength of the public sector by developing internationally-competitive integrated resorts (the 'IRs'). Therefore, under the IR Promotion Law, the establishment of casino facilities is only one component in a complex mixture of facilities contributing to the promotion of tourism, such as convention centers, recreation facilities and accommodation. The development and operation of stand-alone casino facilities will not be permitted. The Japanese government's model is not Las Vegas or Macao, where there is a large number and variety of casinos; but rather, their model is Singapore, where there are only two licensed casinos, which constitute a portion of large-scale resort complexes comprising hotels, convention centers, shopping malls and other tourist attractions.

III. Summary of the IR Promotion Law and Potential Legal Issues

Post-legislation Process

Under the IR Promotion Law, the Japanese government will establish a new agency headed by Prime Minister Shinzo Abe – the IR promotion headquarters. The IR promotion headquarters is tasked with drafting a bill for the Law on the Execution of IR Areas (the 'IR Execution Law') within its first year. Once the IR Execution Law is approved by the Diet, licensing and other processes that are necessary for setting up IR areas and IRs will commence. Since IR facilities will comprise large-scale building structures whose construction will take at least one or two years, the grand opening of the first IR or casino facility will take place four years from now at the earliest. Therefore, it is unlikely that the grand opening of the initial casino facilities will occur in time to lure foreign tourists to the 2020 Tokyo Olympic Games as the Japanese government had initially intended.

Number of IR Areas

While the IR Promotion Law does not expressly state how many IR areas will be developed, according to pro-casino Diet members, the number will initially be limited to two or three areas that will be selected from among various municipal bodies that have shown interest in developing an IR/casino project. This small number is consistent with the requirement of the supplemental resolutions of the Diet that the number of IR areas shall be strictly limited. While there is scope for the number of IR areas to be increased in a phased manner after evaluation or inspection of the results or issues arising out of the initial IRs, such increase would only be up to the maximum number of the IR areas statutorily prescribed pursuant to the supplemental resolutions of the Diet. In contrast, the Singaporean government announced that other than the initial two IR licenses, no others would be granted during the first 10 years.

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Two-step Selection and Direct Casino Licensing System

Under the IR Promotion Law, the first step is for the Japanese government to select the IR areas to be developed from among the municipal bodies that put themselves forward as candidates. The second step will see the selected municipal body publicly tender the development and select a private IR/casino operator. Simultaneously, the selected private operator shall be licensed and supervised directly by the Japanese government or its agency to develop and operate the casino facilities. This two-step system is similar to the two-tier licensing approach used in the selection of casino sites and operators under the UK Gambling Act 2005. However, the IR Promotion Law does not elaborate on the role that the municipal body will play after the selection of the IR/casino operator.

Who is Eligible as an IR Developer/Operator?

The selection of an appropriate IR/casino operator is most important for the success of an IR/casino project. Some pro-casino Diet members have suggested that it would be preferable if an IR were developed and operated by a consortium composed of internationally-recognized casino-operators and a Japanese listed blue-chip corporation, like a developer or a general construction company. This kind of consortium would be at an advantage in terms of fund-raising and sharing the know-how that is necessary for the development and operation of large-scale IRs.

Casino supervisory commission

The Japanese government will establish a new casino supervisory commission (the ‘Commission’) as an external bureau of the Cabinet Office to conduct the necessary monitoring and supervision of IR/casino operations. The Commission will have quasi-legislative power and will draw up detailed rules in respect of casino operations and will take measures deemed necessary to prevent illegal acts and to eliminate harmful influences to society which might arise. In addition, to secure the good order and safety of the development and operation of casino facilities, the Commission will regulate various casino-related parties such as:

- (i) those who establish and operate casino facilities;
- (ii) those who manufacture, import or sell casino-related equipment; and
- (iii) those who provide services to customers of casino facilities.

Prospective Regulations on Development and Operation of Casino Facilities

The Japanese government has indicated that it will take the following measures to prevent illegal acts taking place within casino facilities and to eliminate harmful influences on society which might arise in connection with the development and operation of casino facilities:

- (i) establish standards that are necessary to ensure the fairness of the games that will be played in casino facilities;
- (ii) ensure the appropriate use of chips and other cash equivalents that will be used in casino facilities;
- (iii) establish rules necessary to eliminate criminals, criminal organizations and other types of inappropriate persons from being involved in casino facilities;
- (iv) encourage persons developing and operating casino facilities to develop facilities, organizations and other systems for surveillance, crime prevention and crime reporting;

- (v) establish rules necessary for maintaining a moral environment;
- (vi) establish rules on advertising and publicity;
- (vii) disseminate knowledge and take other necessary measures for the protection and sound upbringing of young people; and,
- (viii) protect casino visitors from bad influences arising from the use of casino facilities.

The IR Promotion Law does not specify any further details of these measures. However, in relation to items (ii) to (v) above, since large sums of money will be exchanged and traded in casino facilities, it will be important to strictly monitor and prevent money laundering from taking place at casino facilities and through its settlement system. Under the Law on the Prevention of Money Laundering (law No. 22 of 2007, as amended) and the recommendation of the Financial Action Task Force, casino operators, including VIP junket operators, should be obliged to:

- (i) verify the identity of customers when conducting casino transactions (for example, when exchanging cash and chips exceeding a certain amount or receiving 'front money' deposits);
- (ii) create and maintain customer identification records; and,
- (iii) notify the relevant authorities of any suspicious transactions.

Regarding item (iii) above, criminals and criminal organizations will be eliminated during the selection process for casino operators and other casino-related business enterprises and will also be prevented from entering casino sites by using visitor entry inspection systems.

Regarding item (vii) above, it may be advisable to impose age checks on visitors upon entry into casino facilities and to educate students at schools on the risks of gambling.

Regarding item (viii) above, as in Singapore and other jurisdictions with casinos, the development of programs promoting responsible gambling to prevent problem gambling and providing help to problem gamblers should be considered.

In addition, the IR Promotion Law obligates the Japanese government to take measures to regulate entry into casino facilities by, for example, setting eligibility criteria, imposing entry fees, facilitating an exit program or only permitting entry by adults. This is considered necessary to prevent casino facilities from having a negative influence on Japanese individuals and to prevent the proliferation of problem gamblers within Japanese society. In the past, to prevent any increase in the number of problem gamblers within Japanese society, there was a discussion that only foreign individuals should be permitted to enter casino facilities. However, such limitation was criticized since it will considerably diminish the economic effect of a casino and, as a compromise, the above requirement was added to the bill.

Casino Levies

Under the IR Promotion Law, the Japanese government and the relevant municipal body may levy and collect certain fees from those developing and operating casino facilities, although the legal nature of those fees or taxes is not yet clear. All or part of the fees should be used to implement programs for the prevention of problem gambling, such as conducting campaigns to raise awareness of problem gambling or providing counselling to problem gamblers, or for enhancing other public interests.

The Japanese government and the relevant municipal body may also collect entrance fees from visitors to the casino facilities. As a method to protect Japanese citizens from problem gambling, as in

Singapore, a two-tier fee system could be imposed, whereby foreign visitors can enter the casino facilities free of charge but Japanese citizens would have to pay an entrance fee.

Compliance With Other Applicable Laws

Casino developers and operators will have to ensure that casino facilities and systems comply with all applicable Japanese laws. This may be complicated as a number of different laws will inevitably apply to the kinds of activities carried out at casino facilities. For example, regarding the exchange of cash and chips, the receipt of cash from customers as deposits –as front money or otherwise –and the lending of chips to customers on credit, the following laws are likely to apply: the Law on Cash Settlement, the Law on Regulation of Receipt of Investment, Deposit and Interest Rates and/or the Lending Business Law. Similarly, regarding the development of IR facilities, the City Planning Act, the National Land Use and Planning Act and the Construction Standard Act are likely to apply. The Law on Control and Improvement of Amusement and Entertainment Business may also apply in respect of casino games and other entertainment and amusement activities.

Prospective Financing and Investment Methods for the Development and Operation of Casino Facilities

Due to the large scale and complexity of IR/casino facilities, an enormous amount of funds will need to be raised for their development and operation. This will undoubtedly provide various opportunities for domestic and international business entities and financial institutions.

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