



# ICLG

The International Comparative Legal Guide to:

## Gambling 2018

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A practical cross-border insight into gambling law

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# Japan

Nagashima Ohno & Tsunematsu

Masayuki Fukuda



## 1 Relevant Authorities and Legislation

### 1.1 Which entities regulate what type of gambling activity in your jurisdiction?

The prospective regulators of gambling activities are the Minister of Land, Infrastructure, Transport and Tourism, and the Casino Supervisory Commission (the “Commission”), which will be established as the regulatory entity at the national level under the Law on the Execution of Integrated Resort Areas (the “IR Execution Law”). The IR Execution Law is to be approved by the Diet by the end of 2017 pursuant to the Law on Promotion of the Development of Specified Integrated Resort Areas (the “IR Promotion Law”).

In Japan, unless specifically permitted by law, gambling and lotteries are criminal activities under chapter 23 (articles 185 to 187) of the Penal Code of Japan (law number 45 of 1907, as amended). As a result, for decades, only horse racing, bicycle racing and certain other forms of racing and lotteries operated by public organisations have been formally permitted in Japan. *Pachinko* and *Pachisuro* are popular amusement games which are operated by the private sector in Japan, but they are not expressly permitted forms of gambling under any specific laws, and some still suspect that they might be illegal forms of gambling since, arguably, ball-/medal-winners may indirectly exchange the balls/medals for cash.

However, on the 15<sup>th</sup> December 2016, the IR Promotion Law was finally approved by the Diet of Japan and thereunder, for the first time in the modern history of Japan, the private sector will be formally allowed to legally develop and operate gambling facilities. The IR Promotion Headquarters, which was newly established under the IR Promotion Law, is currently discussing licensing and other regulatory matters in relation to casinos. It is currently expected that the grand opening of the first casino facility will take place in the middle of the 2020s.

Under the IR Promotion Law, the Japanese government will establish the Commission as an external bureau of the Cabinet Office, which will conduct the necessary monitoring and supervision of casino operations. The Commission will have quasi-legislative power, will draw up detailed rules in respect of casino operations and will take the measures that are necessary to prevent illegal activities and minimise any harmful effects on society that may arise.

### 1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

As stated above in question 1.1, all gambling activities conducted

by the private sector are prohibited as criminal offences under the Penal Code unless they are permitted under the IR Promotion Law (enacted in 2016) and the IR Execution Law.

Unfortunately, the Japanese public still have deep-rooted concerns over casino/gambling, including those relating to problem gambling, deterioration of security of society, intervention of anti-social forces and negative influences on minors. The biggest issue is problem gambling. In an aim to mitigate the public’s concerns over problem gambling, the ruling parties submitted to the Diet, for its approval, a bill concerning the Basic Law on Measures against Problem Gambling in June 2017, so that it can be approved by the extraordinary session of the Diet to be held in the fall of 2017.

## 2 Application for a Licence and Licence Restrictions

### 2.1 Who can apply for a licence to supply gambling facilities?

According to current discussions within the government, a licensee must be an IR operator who will operate a complex mixture of facilities, such as convention centres, recreational facilities, tourist facilities and accommodation as well as a casino, and a stand-alone casino operator will not qualify as a licensee.

A supplemental resolution of the Diet relating to the IR Promotion Law requires that the number of IR areas be strictly limited and that the maximum number will be specified by statute. According to the current prominent view, the initial number of IR/casinos will be just two or three, and such number might be increased later but only up to around 10.

Residency requirements for operators and other casino-related parties have not yet been discussed in detail, but some argue that a casino should be developed and operated by a consortium composed of internationally-recognised casino operators and Japanese listed blue-chip corporations, since such a consortium would be at an advantage in terms of fund-raising and sharing the know-how necessary for the development and operation of casinos. There are views that it would be difficult for 100% of non-resident applicants to be granted a casino licence.

### 2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

The IR Promotion Law requires that, in order to secure good order

and the safety of the development and operation of casino facilities, the Commission will regulate various casino-related parties, such as (a) casino operators who establish and operate casino facilities, (b) casino equipment providers who manufacture, import or sell casino-related equipment, and (c) casino service providers who provide services to customers of casino facilities.

In addition to the above, according to current discussions within the government, any shareholder having 5% or more of the aggregate voting rights of the licensed casino operator must obtain approval from the relevant authority, on the basis that such a shareholder may materially affect the operator's casino business by exercising its shareholders' rights and may receive distributions from the casino's profits.

Similarly, to exclude anti-social forces, etc. from casino operations, all the counterparties of transactions to be made with the casino operator must obtain approval from the relevant authority.

In addition, casino equipment manufacturers, etc. who manufacture, import, sell, lease or repair casino-related equipment ((a) slot machines, roulette tables, cards, dice and other items which affect the results of games; (b) chips, chip-cash-exchange machines and other items which affect money payment based on the results of games; and (c) casino management systems and other matters relating to the management of games) will need to obtain licences from the relevant authority to ensure the sound operation of casino businesses. In addition to licensing, considering that the qualities or functions of casino-related equipment will affect the sound operation of casino businesses, technical standards will be pre-set and casino operators and casino equipment providers will need to comply with such standards.

According to current discussions within the government, if a party other than a casino operator owns the casino facility and leases such facility to the casino operator, then such facility owner will need to obtain approval from the relevant authority.

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### 2.3 What restrictions are placed upon any licensee?

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For the duration of their licences (periodical renewals will be required), the licensees will be subject to certain obligations, including making periodical reports to the Commission and allowing onsite inspections by the Commission. In addition, gambling activities may only be conducted within the licensed gambling facility and online gambling may not be conducted inside or outside the casino facilities.

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### 2.4 What is the process of applying for any gambling licence or regulatory approval?

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According to current discussions within the government, strict background checks on the operator's officers/directors, employees, subsidiaries, affiliated companies and other relevant persons/entities (including external persons who have controlling power over any casino operation) will be made. Following foreign countries' practices relating to the licensing process, comprehensive information such as: (a) litigation records, educational records, military records, employment records, marital records, criminal records and other non-financial information; and (b) bank accounts, money lending, life insurance, promissory notes, mortgages, debts owed and other financial information will be required to be submitted by each relevant person/entity to check his/her/its integrity or soundness regarding business operations. Out-of-pocket expenses for such background checks will be borne by the relevant applicant.

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### 2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

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As stated in question 2.3 above, the licence period will be limited to a certain number of years (although a specific time period has not yet been proposed) and periodic renewals will be required to ensure the licensees' continuous integrity.

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### 2.6 By product, what are the key limits on providing services to customers? Please include in this answer the material promotion and advertising restrictions.

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According to current discussions within the government, Japanese residents may enter into casino facilities. However, in order to prevent any increase in the number of problem gamblers within members of Japanese society, the maximum number of casino entries by Japanese residents will be limited to a certain frequency per week and per month and an individual number card (the "My Number Card") will be required to be presented to check the identity of resident visitors upon their entry into the casino facilities.

According to current discussions within the government, to protect the people's trust on the sound operation of casino business, the Commission will permit only socially acceptable gaming. In addition, to ensure the fair operation of casino activities, only casino activities that are manageable by the casino operator will be permitted and betting among customers or betting on a competition or match conducted by third parties, such as sports betting or in-running betting, will be prohibited. Taking into consideration that the sale of lottery tickets is currently operated only by municipal bodies, etc. for public interest purposes, the sale of lottery tickets will not be permitted even within casino facilities.

The IR Promotion Law requires that advertisements and publicity conducted by a casino business must be regulated by establishing certain rules. According to current discussions within the government, in order to prevent problem gambling and maintain the sound upbringing of young people, good morals, a clean entertainment environment and the protection of customers, false or over-exaggerated advertisements will be prohibited and the installation of signboards, posters and other advertisements and the distribution of leaflets concerning casinos outside the IR district will be prohibited. In particular, for the sound upbringing of young people, the distribution of leaflets and the solicitation of minors to visit casinos will be prohibited, irrespective of whether it takes place outside or inside the IR district. As for advertisements on television, the internet or on other media, considering the substantial and direct influence on problem gambling or minors, the method of such advertisements will have to be appropriate and comply with the Commission's guidelines on advertisements and solicitation. Further, a display or a note warning against the relationship between the use of casinos and problem gambling, and indicating that minors' entry into casinos is prohibited will be mandatory.

As for regulations on comps, considering their benefits for soliciting foreign tourists and VIP customers, they will not be completely banned; however, the provision of excessive amounts of comps to induce the use of casino facilities or any method of providing comps that are against good morals will be prohibited. In addition, casino operators will be obligated to keep a record of the dates on which comps are offered, the names of the customers who received such offers, and the amounts and types of comps offered. Furthermore, the provision of comps will also be subject to regulations under the Act against Unjustifiable Premiums and Misleading Representations (Law No. 134 of 1962, as amended).

As for regulations on junket business, a supplemental resolution of the Diet relating to the IR Promotion Law requires that regulations on junket business will need to be discussed with extreme prudence. According to current discussions within the government, since casino operations will be exclusively permitted to be conducted by licensed casino operators, in principle, junket business (including money lending to customers) may not be conducted by any other party, and only certain limited activities, such as making advertisements, the solicitation of customers or the provision of comps entrusted by casino operators may only be conducted by a third party under the approval of the Commission.

## 2.7 What are the tax and other compulsory levies?

Pursuant to the IR Promotion Law, the Japanese government and the relevant municipal body may levy and collect certain fees from persons developing and operating casino facilities, although the legal nature of those fees or taxes is not clear.

According to current discussions within the government, the casino operator will bear: (a) a floating tax, the amount of which will be determined in proportion to the GGR (gross gaming revenue, which is the aggregate betting amount minus the amount refunded to customers (excluding comps)); the revenue from this tax will be used for various public interest purposes; and (b) a fixed tax which will cover the administrative expenses of the Committee. In addition, (c) out-of-pocket expenses that are incurred for conducting background checks and other processes for the granting of a licence or approval will be borne by the applicant.

Under the IR Promotion Law, the Japanese government and the relevant municipal body may collect entrance fees from visitors to the casino facilities. According to current discussions within the government, an entrance fee of a fixed amount per day will be collected from every customer other than foreign tourists.

## 2.8 What are the broad social responsibility requirements?

Since the gambling licence is a privilege, the licensed operator will need to have high standards of ethics and integrity, and shall take the measures that are necessary to ensure responsible gambling, the protection of minors, anti-money laundering and certain other public interest purposes.

## 2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

A supplemental resolution of the Diet relating to the IR Promotion Law requires that, in order to appropriately respond to the Recommendations of the Financial Action Task Force (the "FATF"), necessary and stringent measures (including imposing criminal sanctions) will be taken, such as verifying the identity of customers when they conduct casino transactions, creating and maintaining customer identification records and notifying the relevant authorities of any suspicious transactions.

According to current discussions within the government, members of organised crime groups will be statutorily prohibited from entering into casino facilities, and casino operators will be prohibited from having such members enter into casino facilities. Meanwhile, members of anti-social forces other than organised crime groups and other persons who might conduct inappropriate activities and

disrupt the good order of casino facilities will be prohibited from entering into casino facilities pursuant to the "terms of use" of the casino facilities. To ensure the accomplishment of such entry prohibitions, visitors will be required to represent that they are not members of organised crime groups or other anti-social forces, and those who make false representations will be forced to leave the casino facilities.

Following the Recommendations of the FATF, the following requirements will be imposed: (a) verifying the identity of customers and creating and maintaining customer identification records upon conducting cash and chip exchanges, receiving 'front money' deposits, money lending, money transfers, currency exchanges or other casino transactions exceeding a certain amount; (b) notifying the Commission of any suspicious transactions when conducting cash and chip exchanges or other casino transactions exceeding a certain amount; and (c) submitting to the Commission a CTR (a cash transaction report) in respect of all cash transactions exceeding a certain amount (this third regulation will be an additional requirement, since it is not required under the Law on the Prevention of Money Laundering (Law No. 22 of 2007, as amended)).

To prevent money laundering and the circumvention of credit regulations for the prevention of problem gambling, transfers of chips, vouchers and other cash equivalents will be regulated. In particular, the transfer of chips, etc. among customers will be prohibited. To prevent money laundering and the forgery of chips, vouchers, etc., the carrying of chips, vouchers, etc. from within the casino facilities to outside will be prohibited. To ensure compliance with the above rules, casino operators will be required to provide in its "terms of use", and to show signs in the entrance/exit gate or other locations of the casino facilities, that the transfer or carrying of chips, vouchers, etc. from within the casino facilities to outside is prohibited; further, casino operators will have to watch using surveillance cameras or through its employees or other security patrols that such transfers or carrying out of chips, vouchers, etc. take place. In addition, chips, vouchers, etc. will have built-in IC tags that can be detected at entry/exit gates and other functional restrictions.

In addition, casino operators will be obligated to have an efficient internal management system, such as: (a) taking measures for updating, from time to time, information in respect of items that are verified when conducting casino transactions (e.g., details of identification documents that are required from customers, etc.); (b) providing education and training to employees; (c) putting in place a system for implementing anti-money laundering measures, such as the appointment of a supervising manager; (d) putting in place a system for auditing anti-money laundering measures, such as the appointment of auditors; (e) conducting self-evaluations and internal audits concerning their anti-money laundering measures and reporting the results of such evaluations and audits to the Commission from time to time; and (f) establishing "internal management rules" in the form of business manuals which set forth clear procedures for the above measures.

As for finance-related businesses, according to current discussions within the government, to enhance customers' convenience, businesses involving money lending to customers, money transfers and receipts, money deposits and currency exchanges will be permitted subject to the prohibition of excessive loan collection measures, the requirement of a deposit for money transfers, etc. and other regulations that are similar to those under the Money Lending Act or the Payment Service Act. In addition, since money lending might accelerate problem gambling, access to loans will be limited to customers who have the financial capability of depositing with the operator an amount of cash exceeding a certain amount or customers who are foreign residents. Also, to prevent excessive

lending, casino operators will be obliged to check their customers' capabilities to repay their loans and to set a separate maximum loan amount for each customer.

As for money transfer/receiving businesses, to prevent money laundering, all money transfers and receipts carried out by casino operators upon customers' requests will only be carried out via financial institutions, without any exception, and each customer's deposit will only be transferred to that customer's own account.

To prevent problem gambling, the purchase of chips using credit cards will only be permitted to foreign tourists and other non-residents. Due to the same reason, ATMs (automatic teller machines) will not be permitted to be installed within casino facilities, and only ATMs without money-lending functions will be permitted to be installed in areas surrounding casino facilities.

### 3 The Restrictions on Online Supply/Technology Support/Machines

#### 3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

To strictly manage entry into casino facilities and prevent problem gambling, only casino activities that are to be conducted within the casino facilities will be permitted and casino activities in which players can participate from outside the casino facilities, such as online games, will not be permitted.

It is not clear whether Japanese residents are permitted to use online casino services that are operated outside of Japan. However, in 2016, a number of users of foreign online casino services have been arrested for allegedly committing the crime of gambling.

#### 3.2 What other restrictions have an impact on online supplies?

Online gambling is prohibited. Please see question 3.1 above.

#### 3.3 What terminal/machine-based gaming is permitted and where?

Terminal/machine-based gambling is prohibited unless they are conducted by licensed casino operators within the casino facilities.

## 4 Enforcement and Liability

### 4.1 Who is liable for breaches of the relevant gambling legislation?

In general, the operator of the casino facility will be liable for breaches of the relevant gambling legislation. If such a breach is so material that they constitute illegal gambling, then criminal sanctions might be imposed upon the customer (for the conduct of gambling) as well as the operator of the casino facility (for gaining a profit by operating a place for gambling) under the Penal Code of Japan.

### 4.2 What is the approach of authorities to unregulated supplies?

The Commission might impose administrative sanctions, such as the issuance of an order requiring the revocation of a licence, the suspension of a business, improvements to be made to a business, etc. If a case involves serious wrongdoing, a prosecutor might investigate the case and bring criminal proceedings for gambling offences.

### 4.3 Do other non-national laws impact upon liability and enforcement?

There are no treaties or other international laws which have an impact upon liability or enforcement.

### 4.4 Are gambling debts enforceable in your jurisdiction?

Debts which arise from illegal gambling are not enforceable. However, once such debts are paid, the debtor may not be able to recover them. Meanwhile, debts which arise from legal gambling would be enforceable.

## 5 Anticipated Reforms

### 5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?

As stated above, the IR Execution Law, including detailed regulations relating to casino operations, is expected to become legislation by the end of 2017 and it is anticipated that the grand opening of the first Japanese casino facility will take place in the mid-2020s.



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