

# International Comparative Legal Guides



## Gambling 2020

A practical cross-border insight into gambling law

**Sixth Edition**

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# Gambling 2020

**Sixth Edition**

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# Japan

Nagashima Ohno & Tsunematsu



Masayuki Fukuda

## 1 Relevant Authorities and Legislation

### 1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Prohibited.	The Casino Supervising Commission (the “Commission”) (note: it has not yet been established).
	Poker	Prohibited.	The Commission.
	Bingo	Prohibited.	The Commission.
Betting	Betting	Only online betting on horse races, bicycle races, motorcycle races and motorboat races operated by the Japanese government or municipal bodies is permitted.	
	Sports/horse race betting (if regulated separately to other forms of betting)	Please see above.	
	Fantasy betting (payment to back a ‘league’ or ‘portfolio’ selection over a period of time, for example in relation to sport or shares)	Prohibited.	

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Lotteries	Lotteries	Only lottery tickets issued by municipal bodies may be sold via the Internet.	Only lottery tickets issued by municipal bodies are permitted.
	“Social” gaming with no prize in money or money’s worth	Not specifically regulated.	
Social/Skill arrangements	Skill games and competitions with no element of chance	Not specifically regulated, but excessive prizes might be banned by the Consumer Affairs Agency or the Fair Trade Commission under the Act against Unjustifiable Premiums and Misleading Representations.	

### 1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

For many years, all gaming activities operated by the private sector, either in digital form or in land-based form, were prohibited as criminal offences under the Penal Code. However, the Integrated Resort (“IR”) Promotion Law and the IR Implementation Law were enacted in 2016 and 2018, respectively. Under these statutes, gaming activities conducted by licensed casino business operators in land-based form within IRs are legalised. Meanwhile, online gaming activities are still prohibited. Betting on horse races, bicycle races, motorcycle races, motorboat races and lotteries are only operated by the public sector, and are only made in land-based form (although the betting on such races and the purchase of lottery tickets may be done via the Internet). There are no statutes specifically regulating social/skill games either in digital form or in land-based form.

## 2 Application for a Licence and Licence Restrictions

### 2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, "Licences") are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

As above-mentioned, casino services may be provided only within IR areas and an authorisation by the Minister of Land, Infrastructure and Transport will be necessary on the IR area implementation plan to implement in that IR area. While casino business licences are necessary for the lawful offer of gaming activities in Japan, such licences may only be granted to IR operators (who operate a complex mixture of facilities, such as convention centres, recreational facilities, tourist facilities and accommodation facilities, as well as casinos) certified by the Minister of Land, Infrastructure, Transport and Tourism under the IR Implementation Law. In other words, a stand-alone casino business operator (a non-IR operator) will not qualify as a licensed casino business operator.

Under the IR Implementation Law, the maximum number of certified IR areas is three (which number will be reviewed seven years after the issue date of the initial certifications). Each IR area may have only one casino, which will be operated by one casino business operator.

IR/casino business operators must be companies incorporated under the Companies Act (typically, a *kabushiki kaisha* ("KK") or a *godo kaisha* ("GK")). There are no residency or nationality requirements to become an owner of an IR/casino business operator, but any person who wishes to own 5% or more of the voting rights, shares or interests in an IR/casino business operator needs to obtain the permission of the Commission.

### 2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

As mentioned above, the Commission may grant a casino business licence to a certified IR operator to operate a casino business in a casino activity area, which is located inside its IR area.

In addition, the Commission regulates certain other IR/casino-related parties: (a) a casino facility provider must obtain a licence from the Commission if it manages and leases casino facilities to a casino business operator; and (b) the owner of any land that is used for IR/casino facilities must obtain the permission of the Commission if it transfers or leases the land to an IR/casino business operator. Since the casino business operator may not execute a contract under which it will pay the counterparty an amount in proportion to the gross gaming revenue ("GGR"), the rent of such casino facility or land shall be agreed in a fixed amount.

Any shareholder having 5% or more of the aggregate voting rights, shares or interests in a licensed casino business operator or a casino facility provider must obtain the permission of the relevant authority, on the basis that: (i) major holders of such voting rights, shares or interests may materially affect the casino business operator's casino business, or the casino facility provider's casino facility management or lease business, by exercising their rights as holders of these voting rights, shares or interests; and (ii) they receive distributions from the casino's profits. Licensed casino business operators and licensed casino facility operators must periodically file with the Commission a list of all holders of voting rights, shares or interests, pursuant to the rules of the Commission.

To maintain casino business operators' integrity and exclude anti-social forces from casino operations, casino business operators must only enter into contracts with counterparties who satisfy certain eligibility criteria, such as having sufficient social credibility and not

being categorised as an anti-social force. To achieve this purpose, a casino business operator must obtain the permission of the Commission if it wishes to enter into: (i) contracts regarding a casino business or any other relevant business within a casino activity area (i.e., the provision of food and drinks, concerts and other entertainment and goods); (ii) contracts delegating the operation of the business of the casino business operator; (iii) contracts for fundraising; (iv) contracts for the lease of a facility by the casino business operator; and (v) contracts whose term or consideration exceeds the threshold period or amount that is set forth in the rules of the Commission. Similarly, a casino facility provider can only enter into contracts with persons who satisfy certain eligibility criteria that are similar to those described above, and must obtain the approval of the Commission if it wishes to enter into: (a) contracts regarding the lease of a casino facility; (b) contracts delegating the operation of the business of the casino facility provider; (c) contracts for fundraising; and (d) contracts whose term or consideration exceeds the threshold period or amount that is set forth in the rules of the Commission. Likewise, the owner of any land that is used for IR/casino facilities must obtain the permission of the Commission if it wishes to transfer or continue to own the land or create a lease or any other right over it.

Furthermore, to ensure the sound operation of casino businesses, casino-related equipment providers must obtain the approval of the Commission if they wish to manufacture, import or sell casino-related equipment. In addition, on the basis that the quality and functionality of casino-related equipment affect the sound operation of casino businesses, casino-related equipment providers shall comply with technical standards for casino equipment. Casino-related equipment providers also have to (a) pass an inspection of electro-magnetic casino-related equipment that is conducted by an inspection institute and designated by the Commission, and (b) examine non-electro-magnetic casino-related equipment on their own and report the result of such examination to the Commission.

### 2.3 What is the process of applying for a Licence for a Relevant Product?

The certified IR operator will file with the Commission an application for a licence for casino business operation, and the Commission will examine whether such applicant satisfies certain eligibility criteria, such as its capability to operate a casino business in terms of human resources, social credibility, financial stability, anticipated profitability, the floor area for casino activities, the technological quality of the casino facility's structure and equipment, the technological quality of the casino-related equipment and certain other factors. If the IR operator satisfies these criteria, the Commission will grant a licence for casino business operation. Strict background checks on the casino business operator's officers, directors, employees, subsidiaries, affiliated companies and other relevant persons and entities (including external persons who have a controlling power over any casino operation) will be carried out during the above licensing process. Detailed information will be required to be submitted to the Commission to check the integrity and soundness of the IR operator's business, and out-of-pocket expenses for such background checks will be borne by the applicant.

### 2.4 Are any restrictions placed upon licensees in your jurisdiction?

Only one casino facility may be opened within one IR area and the maximum floor area of casino activity will be regulated by a Cabinet Order (which is expected to be 3% of the total floor area of the IR area).

After completion of the construction of the relevant casino facility, the licensed casino business operator will file with the

Commission an application for an inspection of the casino-related equipment, tools, computer programs and recording media including such programs, and it will not be able to commence the operation of the casino facility until it has passed this inspection.

The licensed casino business operator will have to establish and comply with the following internal rules: (a) the rules of the method of business operation; (b) the terms of use of the casino facility; (c) the rules for the prevention of problem gambling; and (d) the rules for the prevention of the transfer of criminal proceeds (anti-money laundering).

Every three months, the licensed casino business operator must report to the Commission on the status of the casino operation and the casino facility. In addition, whenever it finds any unlawful activity or material breach of laws and regulations, it must report it to the Commission without delay. Furthermore, every fiscal year, the licensed casino business operator must report to the Commission on its casino-related financial business (i.e., details of (i) money transfers between customers' own accounts and customers' accounts that are managed by the licensed casino business operators, (ii) receipts of money from customers, (iii) money lending to customers, and (iv) its currency exchange business).

The licensed casino business operator is prohibited from having a third party operate its casino business in the name of the licensed casino business operator. With regard to the delegation of the operation of a casino business, in general, a casino business (including its pertinent businesses) must be conducted exclusively by the licensed casino business operator and only (a) the maintenance or repair of casino-related equipment, (b) the collection of casino-related debt from customers, and (c) certain other activities may be delegated to a third party in accordance with the Commission's rules, on the condition that contracts pertaining to such delegation must be approved by the Commission. Similarly, the casino business operator may have a third party provide goods or services within its casino facilities; again, on the condition that contracts pertaining to the delegation of the provision of such goods or services must be approved by the Commission.

If the licensed casino business operator wishes to carry out a merger (by which the casino business operator will be extinguished and the casino business operation will be succeeded by the surviving or new company), corporate split or transfer of its casino business, it must file with the Commission an application for the approval of such transaction.

**2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.**

The duration of the Minister's authorisation on the IR implementation plan is initially 10 years and, thereafter, it shall be renewed every five years. Local municipal council's approval will be necessary for the initial and every renewed authorisation. Risk of suspension of the IR/casino project due to disapproval by the municipal council upon such renewal is a big open issue ("Article 10 issue").

The duration of a casino business licence is three years and a renewal will be required to extend it for another three years, so that the Commission can check that the licensee has maintained its integrity.

The casino business licence may be revoked by the Commission: (a) if the licence was obtained by making a false statement or by using any other unjust means; (b) if the licensed casino business operator has not commenced its casino operation business within six months after passing the inspection of the constructed casino facility; (c) if the casino operation business has been suspended for six months or more without any justifiable reason; or (d) in certain other cases.

If the certification of the relevant IR Area Implementation Plan is revoked, or if the licence of the relevant casino facility provider is revoked or invalid, then the licence of the casino business will also be automatically revoked.

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

- (a) **Entry into Casino Facility:** The maximum number of entries into casino facilities by customers, other than non-resident foreigners, is three times per week and 10 times per 28 days, in order to prevent any increase in the number of problem gamblers. One entry will be counted if a customer enters the casino after the lapse of 24 hours since the previous entry.
- (b) **Customers' ID:** When customers enter or exit the casino activity area, their identity must be confirmed by the casino business operator, and certain ineligible customers will be prevented from entering the casino activity area. Customers other than Japanese non-resident customers, or short-stay foreigners, must use statutorily required individual number cards (so-called "My Number Cards") to prove their identities, while non-resident Japanese or short-stay foreigners may use their passports or other forms of ID.
- (c) **Types of Gaming:** The Commission will set forth in its rules the specific types and methods of permissible gaming (i.e., activities involving a competition for gaining or losing money depending upon coincidental factors, which may be conducted between the casino business operator and the customers or among the customers themselves using equipment or tools installed in a place within the same facility), which are socially acceptable to ensure the public's trust in, and understanding of, the sound operation of casino businesses, taking into consideration the current status of gaming in foreign countries.
- (d) **Promotion and Advertisement:** 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, (i) false or over-exaggerated expressions and explanations, (ii) expressions and explanations which may not be objectively proven to be true, and (iii) expressions and explanations which may violate good morals or damage a clean entertainment environment are prohibited; and the installation of signboards, posters and other advertisements, as well as the distribution of leaflets concerning casinos, are prohibited outside the IR area. In particular, for the sound upbringing of young people, the distribution of leaflets and the solicitation of minors to visit casinos are prohibited, irrespective of whether it takes place outside or inside the IR area. Furthermore, every advertisement or promotion of a casino business or a casino facility shall contain (a) a warning regarding the connection between the use of casinos and problem gambling, and (b) a notice that minors' entry into casinos is prohibited. Furthermore, the casino business operator must (a) educate and train its employees to comply with these rules, (b) create internal compliance rules, (c) appoint persons in charge of activities that are necessary for compliance with these rules, and (d) appoint persons to audit such activities. The Commission may order any person who makes any advertisements or promotion that is in violation of these rules to suspend or correct such advertisements or promotion by a certain deadline.
- (e) **Comps:** Although complimentary items ("comps") may be useful to solicit foreign tourists and VIP customers, the provision of comps whose types, method of provision or amounts are so excessive that they might be against good morals is prohibited for casino business operators and other business entities. Casino business operators are obligated to keep records

of (a) the dates on which comps are provided or exchanged with chips, (b) the names of the customers who received or exchanged such comps, and (c) the amounts and types of comps provided or exchanged with chips. In addition, casino business operators must properly recognise the content, economic value and method of provision of comps by third parties and must take measures that are necessary to ensure that such comps are appropriately provided by third parties. Furthermore, the casino business operator must (i) educate and train its employees to comply with these rules, (ii) create internal compliance rules, (iii) appoint persons in charge of activities for compliance with these rules, and (iv) appoint persons who will audit such activities. The maximum amount of giveaways provided under Article 4 of the Act against Unjustifiable Premiums and Misleading Representations (Law No. 134 of 1962, as amended) is not applicable to comps provided by the casino business operator that are pertinent to its casino activities.

- (f) **Junket Business:** In some countries, marketing/promotion, gaming (on casino floors rented or leased from casino operators) and money lending/collection and other casino activities to wealthy customers are collectively categorised and statutorily regulated as “junket business”. However, in Japan, casino activities including junket business can only be conducted by licensed casino business operators. Therefore, there are no special rules regarding junket business in the IR Implementation Law and each activity of junket business is regulated by the relevant general rule.

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

The casino business operator bears: (a) a floating national tax, the amount of which is (i) 15% of the GGR (which is composed of (X) the aggregate chip amount received from customers, less the amount refunded to customers, and (Y) the profit gained from betting among customers) per month, and (ii) a fixed tax which covers the administrative expenses of the Committee; and (b) a floating municipal tax, the amount of which is 15% of the GGR per month. The casino business operator shall pay these taxes to the Japanese government on a monthly basis, by a specific day of each month.

The Japanese government and the relevant municipal body impose entrance fees on customers other than non-resident foreigners entering casino facilities, in the amount of 3,000 yen as the national entrance fee and 3,000 yen as the municipal entrance fee (6,000 yen in total). The casino business operator shall collect these entrance fees from customers upon their entry into casino facilities for the Japanese government and the municipal body, and shall pay such amount to the Japanese government on a monthly basis by a specific day of each month.

## 2.8 What are the broad social responsibility requirements?

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

## 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) **AML:** Members of organised crime groups, or those who used to be members of organised crime groups during the last five years, are prohibited from entering casino facilities. The casino

business operator must: (i) pursue know-your-customer (“KYC”) procedures (confirmation of the identities of customers, the purposes of their transactions, the professions or business purposes and identities of the persons controlling judicial entities); (ii) keep records of transactions; and (iii) notify the authority of any transaction that is suspected to be a transfer of criminal proceeds. In addition, the casino business operator must: (iv) take measures that are necessary to prohibit the transfer of chips among customers and the carrying of chips from within the casino facilities to outside; (v) show signs stating that “the transfer or carrying of chips from within the casino facilities to outside is prohibited” in the area of verification of customers’ identification, as well as the area of casino activities; and (vi) notify the Commission of any delivery of chips or other casino-business-related transactions that accompany the payment or receipt of cash exceeding a certain amount.

To comply with these rules, casino business operators must: (i) establish internal rules for the prevention of transfers of criminal proceeds, which set forth clear procedures for the above measures; (ii) take measures to update, from time to time, information regarding matters that need to be verified when conducting casino transactions (e.g., details of identification documents that are required from customers, etc.); (iii) provide education and training to employees; (iv) put in place a system for implementing anti-money laundering measures, such as the appointment of a supervising manager; (v) conduct self-evaluations and internal audits concerning their anti-money laundering measures; and (vi) take any other measures that are required under the rules of the Commission.

- (b) **Credit Card/ATMs/Money Lending and other Financial Activities:** To prevent problem gambling, only non-resident foreigners are permitted to purchase chips using credit cards. For the same reason, automatic teller machines (“ATMs”) are not permitted to be installed within casino facilities, and only ATMs without money-lending functions are permitted to be installed in areas surrounding casino facilities. To enhance customers’ convenience, (i) money transfers, (ii) receipts of money, (iii) money lending to customers, (iv) currency exchanges, and (v) other incidental activities are permissible subject to (I) certain restrictions, such as the prohibition of excessive loan collection measures, (II) the requirement to pay a deposit to make money transfers, etc., and (III) other regulations that are similar to those under the Money Lending Act or the Payment Service Act (for the purpose of preventing money laundering, all money transfers and receipts carried out by casino business operators upon customers’ requests are only carried out via financial institutions, and each customer’s deposit is only transferred to that customer’s own account).

In addition, considering that money lending might accelerate problem gambling, access to money borrowing is only available to (a) customers who have the financial capability to deposit with the casino business operator cash exceeding a certain amount, and (b) non-resident foreign customers. Also, to prevent excessive lending, casino business operators shall check customers’ capabilities to repay their loans and shall set a separate cap on the loan amount for each customer.

## 3 Online/Mobile/Digital/Electronic Media

### 3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

- (i) In order to strictly manage entry into casino facilities and prevent problem gambling, only casino activities that are



conducted within casino facilities are permitted under the IR Implementation Law. Therefore, online casino activities, whose operators and players are located within Japan but outside the casino facilities, are not permitted.

- (ii) It is not clear whether Japanese residents are permitted to use online casino services whose operators are located and licensed outside Japan, but it may be prosecuted as an illegal gambling if betting is carried out within Japan. In 2016, a certain number of users of foreign online casino services were arrested and charged for committing the crime of gambling. Meanwhile, in 2017, there was a case where a user of a foreign online casino service was investigated and his home was searched by the police, but ultimately this user was not prosecuted.

### 3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

Online gambling is still illegal even after the IR Implementation Law became effective. Please see questions 1.1 and 3.1 above.

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

Terminal/machine-based gambling is prohibited, unless it is conducted by a licensed casino business operator within its casino facilities.

## 4 Enforcement and Liability

### 4.1 Who is liable under local law/regulation?

In general, the operator of the casino facility is liable for any breach of the relevant gambling legislation. If the breach is so material that it constitutes 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 form does enforcement action take in your jurisdiction?

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 may 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 claim to recover them. Meanwhile, debts which arise from legal gambling would be enforceable.

### 4.5 What appetite for and track record of enforcement does your local regulatory authority have? Have fines, licence revocations or other sanctions been enforced in your jurisdiction?

While the Commission is not yet established, it is expected that the regulations under the IR Implementation Law will be strictly enforced by the Commission.

## 5 Anticipated Reforms

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

Under the IR Implementation Law, up to three IR areas will be initially approved by the Minister of Land, Infrastructure, Transport and Tourism. It is currently expected that (a) the Japanese government will publish the Principal Policy after autumn 2019 (which was delayed due to the national election held in July 2019), (b) the candidate municipal bodies will publish the Implementation Policy thereafter, (c) the candidate municipal bodies will choose IR/casino business operators after spring 2020, (d) the candidate municipal bodies and IR/casino business operators will apply for authorisation on the IR Area Implementation Plan by the Japanese government, and the Japanese government will approve the initial three IR areas in around 2021, and (e) the first batch of IR/casinos will be opened in around 2024, at the earliest.

Candidate municipal bodies are already actively pursuing requests for concept ("RFC"), requests for investment ("RFI") or other processes as preparation for the filing of an application for a governmental authorisation of the IR Area Implementation Plan, while private casino business operators are mulling over the candidate IR area in which they will make an application for selection, the concept of the IR/casino business plan and the composition of the consortium that they should establish to build and operate their IR/casino facilities, and are selecting consortium business partners.



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