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CHAMBERS GLOBAL PRACTICE GUIDES

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# Gaming Law 2022

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**Japan: Law & Practice**

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## Law and Practice

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## 1. Introduction

### 1.1 Current Outlook

The Integrated Resort (IR) Promotion Law (the “IR Promotion Law”) and the IR Implementation Law (the “IR Implementation Law”, collectively with the IR Promotion Law, the “IR Laws”) were enacted in 2016 and 2018, respectively. Until then, the operation of gambling activities by the private sector, either in digital or land-based form, had been prohibited as criminal offences under the Penal Code. *Pachinko* (a vertical pin-ball-like gaming machine) and *pachi-slot* (a slot-machine-like gaming machine) have had certain popularity in Japan since the Second World War but the legality of these gaming machines has long been discussed. Under the IR Laws, gambling activities conducted by licensed casino business operators within approved land-based IRs are legalised, and initially up to three IR areas (including casinos) will be approved by the Minister of Land, Infrastructure, Transport and Tourism.

Meanwhile, even after the enactment of the IR Laws, online gaming activities are still prohibited under the Penal Code and it will be illegal to conduct such activities within Japan.

### 1.2 Recent Changes

Due to the COVID-19 pandemic, the schedule of the IR approval process has been substantially delayed. The “Principal Policy” for IR approval was finally published by the national government on 18 December 2020. Thereafter, IR candidate municipal bodies published their implementation policies and are selecting IR/casino business operators that will jointly file applications for approval of IR Area Implementation Plans with the Japanese government. Such applications must have been made during the period from 1 October 2021 to 28 April 2022. It is anticipated

that the Japanese government will approve IR areas (initially up to three areas) after May 2022.

## 2. Jurisdictional Overview

### 2.1 Online

#### Betting/Bingo/Casino/Lotteries

As mentioned in **1.1 Current Outlook**, online gaming activities are prohibited under the Penal Code and will not be legalised even after the enactment of the IR Laws since the IR Laws legalise only gambling activities conducted in land-based casino facilities located within an IR area.

According to a statement regarding online gambling published by the national government on 1 November 2013 (as a response to an enquiry from a member of the Diet), if all or part of the activities in “running a gambling place for the purpose of gaining profit” are undertaken within Japan, they may constitute a crime of “running a gambling place for the purpose of gaining profit” under the Penal Code. Exceptionally, betting on land-based horse races, bicycle races, motorcycle races, motorboat races and lotteries that are operated by the national government, municipal bodies and/or other public sectors (including the sports promotion lottery toto/BIG issued by the Japan Sports Council under the supervision of the Ministry of Education, Culture, Sports Science and Technology) may be performed on an “online” basis.

#### Fantasy Sports

If a user pays a participation fee to the operator and prize money is paid from such participation fee, it may constitute a form of betting that amounts to a crime of gambling (ie, betting values in respect of an uncertain event to compete for winning or losing such values) under the

Penal Code. Using skill in composing fantasy teams may not totally negate fantasy sports' nature of betting. Meanwhile, if prize money is provided only by a third party sponsor, it will be legal.

## Social Gaming

There are no laws specifically regulating the social gaming industry. However, the Computer Entertainment Supplier's Association (CESA), a self-regulating organisation that merged with the Japan Social Game Association (JASGA), issues guidelines regarding real money trade (RMT) and *gacha* (ie, an online random item provision machine similar to a "loot box").

In addition, excessive prizes might be banned by the Consumer Affairs Agency or the Japan Fair Trade Commission under the Act against Unfair Premiums and Misleading Representations (the "Unfair Premium Act"). More specifically, under the Unfair Premium Act, the amount of a prize may not exceed the lower value of:

- 20 times the value of the transaction; and
- JPY100,000.

## Esports

Similar to fantasy sports, if a participant pays a registration fee to the event organiser and prize money is paid from such registration fee, it may constitute a form of betting that amounts to the crime of gambling. In such case, the esports event organiser collecting registration fees may be charged for committing a crime of "running a gambling place for the purpose of gaining profit" under the Penal Code. Therefore, in Japanese esports events, no registration fees should be collected, or, if collected, prize money should not be paid from such registration fees and shall be paid (directly, if possible) from a sponsor or another third party.

## 2.2 Land-Based

Only betting on horse races, bicycle races, motorcycle races, motorboat races and lotteries are operated by the national government, the municipal bodies and other public sectors (including toto/BIG) in land-based form. All other betting, bingo and casino activities used to be prohibited under the Penal Code.

However, as mentioned in **1.1 Current Outlook**, gambling activities to be conducted by licensed casino business operators within approved land-based IRs are legalised under the IR Laws. Under the Japan Casino Regulatory Commission's (the "Commission") rules, baccarat, blackjack (21), poker, roulette, *sic bo*, craps, Casino War, money wheel, *pai gow* (table game) and electronic (table) games are permitted.

## 3. Legislative Framework

### 3.1 Key Legislation

The Penal Code prohibits gambling activities as criminal offences. However, as an exception thereto, the Penal Code will not be applicable to a licensed casino business operator's authorised gambling activities operated as a business under the IR Implementation Law.

### 3.2 Definition of Gambling

While there is no formal definition, a commonly perceived concept of "gambling" is "betting values in respect of an uncertain event to compete for winning or losing such values".

### 3.3 Definition of Land-Based Gambling

There is no statutory definition of "land-based gambling" or "online gambling" since online gambling is still illegal under the Penal Code and only land-based gambling (more specifically, licensed casino business operated within

an authorised IR area) is legalised under the IR Implementation Law.

### 3.4 Definition of Online Gambling

As mentioned in 3.3 Definition of Land-Based Gambling, there is no statutory definition of “online gambling” since it is not legalised, even under the enactment of the IR Implementation Law.

### 3.5 Key Offences

A person who gambles shall be accused of committing a crime of “simple gambling”, though this will not be applicable to a person who bets on an item provided for temporary recreation.

A person who habitually gambles shall be accused of committing a crime of “habitual gambling”.

A person who provides gambling services (“runs a place for gambling or organises a group of habitual gamblers for the purpose of gaining profit”) shall be accused of committing a crime of “running a gambling place for the purpose of gaining profit”.

### 3.6 Penalties for Unlawful Gambling

A person who committed a “simple gambling” crime shall be punished by a fine of not more than JPY500,000 or a petty fine.

A person who committed a “habitual gambling” crime shall be punished by imprisonment for not more than three years.

A person who “runs a place for gambling or organises a group of habitual gamblers for the purpose of gaining profit” shall be punished by imprisonment for not less than three months but not more than five years.

### 3.7 Recent or Forthcoming Legislative Changes

There is no notable recent or forthcoming legislation.

## 4. Licensing and Regulatory Framework

### 4.1 Regulatory Authority

The Japan Casino Regulatory Commission is the key regulatory authority.

### 4.2 Regulatory Approach

An IR Area Implementation Plan shall be approved by the Minister of Land, Infrastructure, Transport and Tourism, and a casino business operation needs to obtain a licence from the Commission. The IR business operator shall file financial statements on a yearly basis and reports on a quarterly basis with the Minister of Land, Infrastructure, Transport and Tourism. Thus, basically, Japan’s regulatory system is structured based upon a traditional “prescriptive” approach.

On the other hand, the Minister shall evaluate, notify and publish the status of the implementation of the IR Area Implementation Plan, and the approved municipal body and the IR business operator shall appropriately reflect the result of such evaluation upon the improvement of their business operation to be made in accordance with the IR Area Implementation Plan. In that sense, the regulations of the IR Implementation Law are partially structured on a “risk-based” approach.

### 4.3 Recent or Forthcoming Changes

On 22 July 2022, the Japan Casino Regulatory Commission issued the Criteria of Examination for Granting Casino Business Licenses, etc,

under the IR Implementation Law and the subordinate Operational Guideline for Examination of Casino Business Licences, etc. The examination will be made by the Commission from various perspectives such as the applicant's capability of appropriate operation of casino business and having sufficient social credibility (including no relationship with mob/gangsters), social credibility of the officers and directors and shareholders of the applicant, financial soundness (sufficient net worth will be required) and good prospect of the result of income and expenditure of casino business (with reasonable ground underlying such prospect), sufficient measures for preventing problem gambling (specific measures for restricting problem gamblers' use of casino will be required), anti-money laundering (specific KYC procedures will be required) and other viewpoints. The above criteria also stipulate the method of calculation of gross gaming revenue (GGR), the criteria for approval of execution of casino business-related contracts (for delegation purpose or otherwise) and certain other matters.

#### 4.4 Types of Licences

Under the IR Implementation Law, casino business licences may be granted only to IR operators that operate a complex mixture of facilities, such as convention centres, recreational facilities, tourist facilities and accommodation facilities, as well as casinos that are authorised by the Minister of Land, Infrastructure, Transport and Tourism. In other words, a standalone casino business operator (non-IR operator) will not qualify as a licensed casino business operator. As a result, casino services may be provided only within IR areas implemented under the IR area implementation plan authorised by the Minister of Land, Infrastructure, Transport and Tourism.

Besides, certain types of IR/casino-related business operators other than casino business operators will need their respective authorisations to conduct such businesses under the IR Implementation Law; for example:

- a casino facility provider must obtain a licence from the Commission if it intends to manage and lease casino facilities to a casino business operator; and
- the owner of any land that is used for IR/casino facilities shall obtain permission from the Commission if it transfers or leases the land to an IR/casino business operator.

The rent of lease of such casino facility or land shall be determined in a fixed amount since it is prohibited for a casino business operator to execute a contract for which the amount of consideration is determined in proportion to the GGR.

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. Since the quality and functionality of casino-related equipment affects the sound operation of casino businesses, casino-related equipment providers shall comply with technical standards for casino equipment as determined by the Commission. Casino-related equipment providers also have to pass an inspection of electromagnetic casino-related equipment that is conducted by the Commission, and examine non-electromagnetic casino-related equipment on their own and report the result of such examination to the Commission.

#### 4.5 Availability of Licences

Under the IR Implementation Law, the maximum number of approved IR areas is initially three (the appropriateness of such number will be reviewed

seven years after the issue date of the initial approvals and may or may not be increased up to ten). Since each IR area may have only one casino operated by one casino business operator, the maximum number of casino business licences is also initially three.

## 4.6 Duration of Licences

The duration of the Minister's authorisation on the IR implementation plan is initially ten years and, thereafter, it shall be renewed every five years. The local municipal council's approval will be necessary for the initial and every renewed authorisation. The risk of suspension of the IR/casino project due to disapproval by the municipal council or otherwise upon such renewal is a big open issue (the so-called 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. In the renewal process, the Commission will check whether the licensee has maintained its integrity during the previous licence period.

The casino business licence may be revoked by the Commission:

- if the licence was obtained by making a false statement or by using any other unjust means;
- 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;
- if the casino operation business has been suspended for six months or more without any justifiable reason; or
- in certain other cases.

If the approval 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.

## 4.7 Application Requirements

The key application requirements for casino business operators are:

- the capability of operating a casino business in terms of human resources, social credibility, financial stability and 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.

The offices of the applicant casino business operators must also have sufficient social credibility.

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 controlling powers over the relevant 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.

A licensed casino business operator shall be a company 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.

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 permission from the Commission since:

- 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
- they receive distributions from the casino's GGR.

Licensed casino business operators and licensed casino facility operators must periodically file with the Commission lists of all holders of voting rights, shares or interests, pursuant to the rules of the Commission.

## 4.8 Application Timing

The approved IR operator applicant 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. The standard licence examination period is not published by the Commission.

## 4.9 Application Fees

An applicant for a licence for a casino business operation shall pay the necessary costs for its examination to the national government. More specifically, such applicant shall pay an estimated amount of such examination costs (background check, etc) calculated and notified by the Commission by a date designated by the Commission. If the amount paid as an estimated amount is short of the amount of actual examination costs, the applicant shall pay the shortfall of costs calculated and notified by the Commission by a date designated by the Commission. If the above estimated amount or additional amount

has not been paid, the Commission may dismiss the application for a casino business licence.

## 4.10 Ongoing Annual Fees

While there is no annual fee, if a casino business operator intends to renew the casino business licence after its valid period, it shall pay the costs necessary for the examination necessary for such renewal of the licence as in the similar amount-determination and payment process mentioned in 4.9 Application Fees.

# 5. Land-Based Gambling

## 5.1 Premises Licensing

As mentioned in 2.1 Online, under the IR Implementation Law, a casino business may be operated only within land-based IR areas authorised by the national government (where IRs or specified complex tourist facilities including convention centres, exhibition facilities, recreational/entertainment facilities, tourism promotion facilities, accommodation facilities and casino are established). Only one casino facility may be operated in a single IR area and the maximum floor area of a casino facility is 3% of the total floor area of such IR.

Up to three IR areas will be initially approved by the Minister of Land, Infrastructure, Transport and Tourism.

## 5.2 Recent or Forthcoming Changes

Due to the COVID-19 pandemic, the schedule for an IR area approval process has been substantially delayed. An application for authorisation as an IR area must have been made from 1 October 2021 to 28 April 2022.

## 6. Online Gambling

### 6.1 B2C Licences

No such licences are available.

### 6.2 B2B Licences (Suppliers, Software, Etc)

No such licences are available.

### 6.3 Affiliates

There is no applicable information in this jurisdiction.

### 6.4 White Labels

There is no applicable information in this jurisdiction.

### 6.5 Recent or Forthcoming Changes

See 1.1 Current Outlook and 1.2 Recent Changes.

### 6.6 Technical Measures

There is no applicable information in this jurisdiction.

## 7. Responsible Gambling (RG), Also Known as Safer Gambling (SG)

### 7.1 RG Requirements

Since a casino business licence is a privilege, the licensed casino business operator shall have high standards of ethics and integrity and shall take measures necessary to ensure responsible gambling.

The Basic Law on Measures Against Gambling Addiction was enacted in July 2018 and became effective in October 2018. Under such law, the national government made the Master Plan for Facilitating Gambling Addiction Measures on 19

April 2019. It is expected that each prefecture will make a plan for facilitating gambling addiction measures in the near future.

In order to prevent addiction to casino gaming, a casino business operator must take the following measures:

- a measure for restricting the use of casino facilities by a visitor upon request from the visitor themselves, their family or other persons concerned;
- a measure for restricting the use of casino facilities by a person who is found to be inappropriate to use casino facilities in order to prevent the harmful effects of addiction to casino gaming;
- a measure for establishing the necessary systems to appropriately respond to consultation on the use of casino facilities by visitors and other measures for helping visitors to make an appropriate decision on the use of casino facilities; and
- other measures necessary for preventing addiction to casino gaming as specified by the rules of the Commission.

To ensure these measures are taken appropriately, the casino business operator must take the following measures.

- Education and training of its employees.
- Improvement of systems to accurately implement the above measures, including the appointment of:
  - (a) persons who exercise overall control over the services necessary for accurately implementing the above measures; and
  - (b) persons who audit the relevant services.
- Evaluations of the above measures.
- Other measures specified by the rules of the Commission.

In addition, a casino business operator and its employees shall comply with the Regulations on Prevention of Addiction (which will be attached to the application for a casino business licence).

To ensure responsible gambling, a casino business operator must not allow the following persons to enter its casino facilities or stay therein, except for the cases specified by the relevant Cabinet order:

- a person who does not pay the national admission fee (JPY3,000 per entry) or the local admission fee (JPY3,000 per entry); or
- a person, other than a non-resident foreigner, who has entered the casino gaming operation area three times in the past seven days; or
- a person, other than a non-resident foreigner, who has entered the casino ten times in the past 28 days.

For implementing such entry restriction, a casino business operator shall confirm the identity of visitors each time upon their entry into, and exit from, the casino gaming operation area.

To ensure responsible gambling, a casino business operator shall also take measures necessary for:

- identifying persons who are prohibited from entering casino facilities;
- having such entry-prohibited persons leave the casino facilities in cases where such persons are identified; and
- preventing such entry-prohibited persons from using the casino facilities.

For compliance with such rules, a casino business operator shall:

- implement education and training for its employees;
- make rules of conduct;
- appoint persons who exercise overall control over the services necessary for complying with these rules; and
- undertake other measures specified by the rules of the Casino Regulatory Commission.

To prevent problem gambling, only non-resident foreigners may 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.

In addition, since money lending might accelerate problem gambling, access to money borrowing is only available to:

- customers who have the financial capability to deposit with the casino business operator cash exceeding a certain amount; and
- 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.

## 7.2 Recent or Forthcoming Changes

There are no notable recent or forthcoming changes.

## 7.3 Gambling Management Tools

No gambling management tools are yet available.

## 8. Anti-money Laundering (AML)

### 8.1 AML Legislation

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. A casino business operator must:

- follow know-your-customer (KYC) procedures (confirmation of the identities of customers, the purposes of their transactions and their professions or business purposes, and the identities of persons controlling judicial entities);
- keep records of transactions; and
- notify the authorities of any transaction that is suspected to be a transfer of criminal proceeds.

In addition, the casino business operator must:

- 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;
- 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
- notify the Commission of any delivery of chips or other casino business-related transactions that accompany the payment or receipt of cash exceeding JPY1 million.

More specifically, a casino business operator must:

- establish internal rules for the prevention of transfers of criminal proceeds, which set forth clear procedures for the above measures;

- take measures to update, from time to time, information regarding matters that need to be verified when conducting casino transactions (eg, details of identification documents that are required from customers);
- provide education and training to employees;
- put in place a system for implementing anti-money laundering measures, such as the appointment of a supervising manager;
- conduct self-evaluations and internal audits concerning its anti-money laundering measures; and
- take any other measures that are required under the rules of the Commission.

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 deposit is only transferred to that customer’s own account.

### 8.2 Recent or Forthcoming Changes

There are no notable recent or forthcoming changes.

### 8.3 AML Requirements

In Japan, money laundering with respect to proceeds from certain serious crimes such as drug-related crimes, murder, burglary and currency counterfeiting (including activities conducted outside Japan that (i) would be criminal offences if they were conducted in Japan and (ii) are criminal offences under the relevant jurisdiction of the place where such activities were carried out) is prohibited as a crime under the Narcotics Special Provisions Act and the Punishment of Organized Crimes and Control of Crime Proceeds Act. In addition, in order to prevent money laundering and terrorist financing, the Criminal Proceeds Transfer Prevention Act (CPTPA) requires that certain types of business



operators such as financial institutions and real estate agents:

- verify the identity of their customers by confirming the customer identification data, the purpose of conducting the transaction, the customer's occupation or the nature of their business and the beneficial owner of the customer (for an incorporated entity only) when undertaking certain transactions that are specified in the CPTPA;
- prepare and preserve records of such verification and the transaction itself; and
- report any suspicious transaction to the competent administrative authority.

These regulations are made based on recommendations issued by the Financial Action Task Force on Money Laundering (FATF).

## 9. Advertising

### 9.1 Regulatory/Supervisory Agency

The Japan Casino Regulatory Commission is the relevant regulatory/supervisory agency.

### 9.2 Definition of Advertising

In the Operational Guideline on Examination of Licenses, etc, issued by the Japan Casino Regulatory Commission, advertising casino business or casino facilities is defined as “any activity notifying unspecified or many persons for inducing them into taking part in casino activities or entering into casino facilities”.

### 9.3 Key Legal, Regulatory and Licensing Provisions

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, the following are prohibited:

- false or over-exaggerated expressions and explanations;
- expressions and explanations that may not be objectively proved to be true; and
- expressions and explanations that may violate good morals or damage a clean entertainment environment.

Every advertisement or promotion of a casino business or a casino facility shall contain:

- a warning regarding the connection between the use of casinos and problem gambling; and
- a notice that minors' entry into casinos is prohibited.

In advertising the casino business or casino facilities, any person must make efforts:

- to give consideration to their influence over persons under 20 years of age and the relationship between the use of casino facilities and addiction to casino gaming; and
- not to advertise excessively.

More specifically, the casino business operator shall:

- educate and train its employees to comply with these rules;
- create internal compliance rules;
- appoint persons in charge of activities that are necessary for compliance with these rules; and
- appoint persons to audit such activities.

## 9.4 Restrictions on Advertising

The installation of signboards, posters and other advertisements is prohibited outside the IR area, except for passenger terminal facilities in airports and ports.

It is expected that the Commission will execute and publish a guideline on the advertisement and promotion of casino business, referencing the existing guidelines under the Tobacco Business Act, whereby, for example, no advertisement of tobacco may be made via radio, the internet or certain other media unless it is technically feasible to make such advertisement target only adults.

## 9.5 Sanctions/Penalties

The Commission may order any person who makes any advertisements of, or promotes, casino business in violation of the applicable rules to suspend or correct such advertisements or promotion by a certain deadline. Any person who violates such order may be subject to punishment by imprisonment with work for up to one year, a fine up to JPY1 million, or both.

The Commission may make a recommendation that a person who has advertised or solicited the casino business or casino facilities in violation of the Commission's guidelines for casino advertisements shall take measures necessary for its correction. If the person does not comply with such recommendation, the Commission may make a public announcement of such non-compliance.

If the Commission finds that where (i) the advertisements might violate the relevant articles of the IR Implementation Law or do not follow the Commission's guidelines for casino advertisements, or (ii) the person might not comply with the Commission's recommendation, then the

Commission may order the relevant person to submit necessary reports or have its officials enter such person's offices or any other facilities and may inspect the relevant documents and other materials. A person who has failed to submit such report or submitted a false report, or has refused, obstructed or avoided an inspection pursuant to the above rules may be subject to punishment by imprisonment with work for up to one year, a fine up to JPY1 million, or both.

## 9.6 Recent or Forthcoming Changes

There are no notable recent or forthcoming changes.

# 10. Acquisitions and Changes of Control

## 10.1 Disclosure Requirements

There are no disclosure requirements specifically tailored for acquisitions or change of control of gaming and gambling companies.

## 10.2 Change of Corporate Control Triggers

Under the IR Implementation Law, if the licensed casino business operator intends to carry out a merger, corporate split or transfer of its casino business, it must file with the Commission an application for the approval of such corporate reorganisation transaction. There is no definition of "merger", "corporate split" or "transfer of (casino) business" under the IR Implementation Law and the terms will have the same meanings as those used under the Companies Act.

A merger is a transaction in which a company's rights and obligations are comprehensively accepted by another company and includes two types of mergers:

- an “absorption-type” merger, in which one company will merge into another company, which will be the surviving company; and
- a “consolidation-type” merger, in which both companies will be merged into a newly incorporated company.

A corporate split is a transaction in which all or part of the rights and obligations of a certain business division of a company are comprehensively transferred to another company and includes two types of corporate split:

- an “absorption-type” corporate split, in which an existing company transfers a certain division of its business to another existing company; and
- an “incorporation-type” corporate split, in which an existing company transfers a certain division of its business to a newly established company.

While there is no definition of “(casino) business transfer” in the Companies Act, it is generally considered as a contract-based transaction in which a company transfers all or part of its business (usually including the relevant assets, liabilities, contracts, employees and other rights and obligations of the target business) to another company.

### 10.3 Passive Investor Requirements

Any person who intends to become a holder of, eg, voting rights equal to or greater than 5% through a merger or any other transactions or acts specified by the rules of the Commission (not yet established) shall obtain an authorisation from the Commission.

## 11. Enforcement

### 11.1 Powers

The Commission shall audit the operations and the accounting of casino business operators every year.

If and to the extent necessary, the Commission may order (i) a casino business operator, (ii) a holder of the voting rights of such casino business operator, (iii) a person who has dominant influence over the business activities of such casino business operator by way of capital contribution, money lending, business or other relationships, and (iv) the employees or former employees of such casino business operator to submit the reports or materials relevant to the services conducted or the assets held by such casino business operator.

Even after the casino business operator has obtained a casino business licence, such casino business operator still has to conform to the licence standards listed in the IR Implementation Law concerning the services conducted, or the assets held, by such casino business operator.

The Commission may, if and to the extent necessary for enforcing the IR Law, have its officials:

- ask interested parties questions about the conformity to the licence standards, the services conducted or the assets held by the relevant casino business operator;
- enter the business office or other establishment of the relevant casino business operator or certain other relevant parties or their employees;
- inspect the accounting books and other items; or

- remove non-electronic or magnetic casino-related devices if and to the extent necessary for testing, without compensation therefor.

The Commission may, when it finds it necessary to maintain the sound operation of the casino business by a casino business operator, taking into consideration the status of the services provided by such operator or the properties thereof:

- order such casino business operator to (i) amend its statement of operational methods, (ii) submit to the Commission the plans for improvement of business operations or status of properties, or (iii) take other necessary measures for improving its business operations or status of properties; or
- if and to the extent necessary, order the suspension of all or part of the relevant casino business or the related services provided within casino operation areas.

## 11.2 Sanctions

The Commission may:

- order the relevant casino business operator to suspend all or part of the relevant casino business or the related services within casino gaming operation areas, setting an appropriate time limit;
- revoke a casino licence or other approval;
- revoke a confirmation upon a casino operator's employees or other staff; or
- order the relevant casino business operator to dismiss the relevant officers.

In addition, the Commission may, when it finds it necessary to maintain the sound operation of the casino business, order the approved principal shareholders of the relevant casino business operators, for example, to take measures deemed necessary for their supervision.

There is no history of enforcement of sanctions since the Commission was only established as of January 2020 and has not granted casino licences to any casino business operators.

## 11.3 Financial Penalties

There are no special rules regarding calculation or enforcement of financial penalties.

## 11.4 Personal Sanctions

Under the IR Implementation Law, there are no financial penalties other than fines that might be imposed in the event of committing criminal offences. Under the Penal Code, profits gained by gambling as a criminal act may be confiscated by the criminal court.

# 12. Recent Trends

## 12.1 Social Gaming

There are no significant recent trends that have impacted social gaming.

## 12.2 Esports

Excessive prizes might be banned by the Consumer Affairs Agency or the Japan Fair Trade Commission under the Unfair Premium Act. Whether or not prize money for esports events constitutes such a prize was not clear. However, in a response to a non-action letter dated 3 September 2019, the Consumer Affairs Agency confirmed that, as of 3 September 2019, prize money and items for esports events that constitute "compensation for work" are not subject to the restrictions on the maximum amount of prizes set forth under the Unfair Premium Act.

## 12.3 Fantasy Sports

In May 2019, a first Japanese fantasy sports event called "FANTASYONEonONE" was held. So as not to constitute betting or gambling, par-



ticipants did not pay participation fees and the prize money (JPY3 million in Amazon gift tickets) was split among the participants who correctly answered the who-wins-the-game quiz.

## 12.4 Skill Gaming

The legality of skill games is little discussed in Japan, and they will generally be considered as a variation of online gambling and will be treated similarly to esports or fantasy sports.

## 12.5 Blockchain or Cryptocurrency

As mentioned in 2.1 Online, online gambling (including online crypt casino) is illegal and therefore a blockchain casino, a form of online gambling, is also illegal. As mentioned in 3.5 Key Offences, a person who bets “a thing to be provided only for temporary recreation” – such as a pack of cigarettes, a bottle of beer or other beverage or food consumable instantly on the spot – shall not be accused of committing a crime of “simple gambling”.

According to a guideline of the Blockchain Contents Association (BCA), non-fungible tokens (NFTs) or other digital assets that may be acquired in the game and tradable among the game users and exchangeable into cash are “data having asset value”, which will not constitute “a thing to be provided only for temporary recreation”. Therefore, *gacha* or other blockchain game betting on NFTs or other valuable data assets may constitute “simple gambling”, a criminal offence under the Penal Code.

Cryptocurrencies will not be permitted to be used in casino facilities operated within IR areas.

## 13. Tax

### 13.1 Tax Rate by Sector

The casino business operator bears the following.

- A floating national tax, the amount of which is:
  - (a) 15% of the GGR (which is composed of (i) the aggregate chip amount received from customers, less the amount refunded to customers, and (ii) the profit gained from betting among customers) per month; and
  - (b) a fixed tax that covers the administrative expenses of the Committee; and
- 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 national government on a monthly basis, by a specific day of each month.

The national government and the relevant municipal body impose entrance fees on customers other than non-resident foreigners entering casino facilities, in the amount of JPY3,000 as the national entrance fee and JPY3,000 as the municipal entrance fee (JPY6,000 in total).

The casino business operator shall collect these entrance fees from customers upon their entry into casino facilities for the national government and the municipal body, and shall pay such amount to the national government on a monthly basis by a specific day of each month.

## 14. Anticipated Reform

### 14.1 Anticipated Reform

There is no notable recent or forthcoming reform.

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**NAGASHIMA OHNO & TSUNEMATSU**

## Trends and Developments

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### Introduction

Traditionally, sports betting in Japan is operated by the public or semi-public sector in respect of only four sports: horseracing, track cycling, motorboat racing and motorcycle racing. In 2021, it was reported by the Financial Times that the Japanese government secretly began discussions surrounding the legalisation of sports betting (in respect of baseball and football, the two most popular sports in Japan) because professional sports industries/organisations and athletes have suffered enormous economic damage due to the COVID-19 pandemic. Concurrently, the sports business subcommittee of the Liberal and Democratic Party, the ruling party, published a proposal titled “aiming to make the sports industry a growth industry” in which they urged the Ministry of Economy, Trade and Industry and the Japan Sports Agency to discuss the efficient use of sports betting, considering that gambling contributes to an increase in tax revenue and develops industries in Europe and the US. The professional baseball and professional football industries and certain pro-sports betting companies such as Rakuten, CyberAgent and Mixi have been lobbying the Japanese government for years to deregulate sports betting, insisting that potential betting revenue in respect of Japanese sports has been outflowed abroad, though such revenue should remain in Japan. In December 2020, the Japan Association of New Economy, a business lobbying body represented by Hiroshi Mikitani, founder of Rakuten, published a proposal for legalising sports betting. As a backdrop, in 2018, sports betting was legalised in the US and has seen remarkable success. Such overseas news has

ignited discussions in Japan in relation to the legalisation of sports betting.

### Question of Legalisation of Sports Betting

In June 2022, it was reported by a newspaper that a study group within the Ministry of Economy, Trade and Industry made a draft proposal for legalising sports betting and the Japan Sports Agency established the Sports Future Development Council, which should have begun intensive discussion over liberalising sports betting. While the Liberal and Democratic Party admitted that various discussions had been taking place within the party, it emphasised that it will be important to make a firm scheme (including identifying an entity to run the operation and demonstrating how the profits and other money are to be distributed) that will be acceptable to the people. Most other political parties criticised the move and asked for thorough prudent discussion over the pros and cons of liberalising sports betting, in particular from the viewpoint of concern over its potential to increase gambling problems and promote unjust rigging.

### Current Legal Status of Sports Betting

Under the current Penal Code, an individual is prohibited from “gambling” or “running a gambling place for the purpose of gaining profit”. In relation to sports betting, bookmakers operate betting services and provide them to users.

Users bet on certain sports on bookmakers’ platforms and such users’ betting may constitute “gambling” since they incur a possibility of gaining or losing property on a matter whose “outcome depends upon chance”. While the

outcomes of sports are not determined solely by chance and players' skills or other extrinsic factors are also important, Japanese courts' precedent states that the above-mentioned requirement that the "result depends upon chance" may be satisfied if chance may even slightly affect the result, except for when the result is obvious judging from the difference of skills or other factors, such as in betting on matches of Japanese chess (*shogi*) or "Go", in which games are normally categorised as "two-players, zero-sum, logical perfection information games" (where there is little room for chance to affect the outcome).

As for bookmakers who control the premises, accept bets from users, distribute winners' prize and collect certain commission fees or entry fees, such activities will constitute "running a gambling place for the purpose of gaining profit" prohibited under the Penal Code. Under a Supreme Court precedent, the above requirement of "running a gambling place" may be satisfied even where a person does not necessarily gather customers into a particular physical site. In this regard, in 2015, a lower court (Fukuoka District Court) held that, in a case where a bookmaker accepted bets from users via emails and the defendant assisted the bookmaker by forwarding emails including handicaps and other information to users, it would be difficult to conclude that the bookmaker had secured and provided a certain space or facility as a gambling place. The Court denied an argument that an electronic space by which the bookmaker and the customers are connected may constitute a "gambling place" since such construction is far from what is normally understood from the wording of the Penal Code. However, in 2017, another lower court (Osaka High Court) held, in a case where a baseball bookmaker accepted bets via a mobile phone application software, that a

"gambling place" may include collective places, including a place where bets are received and tallied by a person who also has other information (eg, as to the customer's location) and it is not necessarily limited to a place where gambling activity physically takes place.

As for licensors who hold the rights to official statistical data and provide such data to data providers in exchange for fees (such as sports leagues, sports teams or athletes, etc) and data providers who receive official statistical data from the licensors and provide such data (with added values such as odds for sports betting) to bookmakers, they may possibly be charged with aiding and abetting users' "gambling" and/or bookmakers' "running a gambling place for the purpose of gaining profit" considering the court precedent where providing roosters for cockfighting or providing market price information for "market price gambling" were charged with aiding and abetting gambling and/or running a gambling place for the purpose of gaining profit. In this regard, whether it will be charged as an accessory to gambling or for running a gambling place will be determined by the relationship among the parties or the roles played by the parties (if licensors or data providers play a major role, they may be charged even as co-principal criminals for "gambling" or "running a gambling place for the purpose of gaining profit").

### *International gambling*

Gambling activities carried out outside Japan will not constitute gambling-related crimes under the Penal Code. Therefore, if a bookmaker is located outside Japan and provides sports betting services only to non-Japanese residents, or if a licensor or data provider provides data to a bookmaker who is located outside Japan and provides sports betting services only to non-Japanese residents, such activities will not con-



stitute gambling-related crimes under the Penal Code. Practically speaking, however, since sports betting services are usually provided via internet, it will be difficult to ensure that sports betting services are not available to Japanese resident users; in reality, many Japanese residents use offshore sports betting services, even though such use might be illegal. Based upon such analysis and reality, it remains risky for a Japanese sports industry/organisation or athlete to provide their data to offshore bookmakers or data providers.

## Esports

As for esports, there has recently been discussion over whether or not esports events with prize money (in Japan, prize money for esports events will be paid only by a third-party sponsor on the ground that if prize money is paid from entry fees paid by players, such competition may constitute “gambling”, a criminal offence under the Penal Code) shall be regulated under the Act on Control and Improvement of Amusement Business Act (the “Amusement Business Act”) as a business allowing customers to use slot machines, video game machines or other game machines that may be used for originally unintended use stimulating customers’ desire to gain profit by chance in stores and other similar facilities (in short, an amusement arcade business). If an esports event is regulated by the Amusement Business Act, the prize money for such esports event would be limited to JPY9,600 (around USD100). First of all, amusement arcade businesses must be carried on in “stores and other similar facilities” and therefore online esports events will not be regulated under the Amusement Business Act. Secondly, the Amusement

Business Act only regulates businesses that allow customers to use “slot machines, video game machines or other game machines which may be used for originally unintended use stimulating customers’ desire for gaining profit by chance”. Therefore, esports events using only computers, tablets, smart phones or other transmittable devices will not be regulated by the Amusement Business Act.

Meanwhile, esports events using video game machines seem to be regulated by the Amusement Business Act since video game machines are expressly listed as gaming machines in the Amusement Business Act. The National Public Safety Commission, the supervising agency of the Amusement Business Act, has not issued any formal opinion on such issue. However, the purpose of the Amusement Business Act is to regulate amusement arcade businesses that may be used to stimulate customers’ desire for gaining profit by chance. Therefore, esports events that do not stimulate customers’ desire for gaining profit by chance shall not be regulated by the Amusement Business Act. In this regard, the Japan Esports Union (JeSU) has published the “Guidelines for Events with Entry Fees” which suggest that if the aggregate amount of the entry fees collected from the participating players will not exceed the operational cost of the event (in other words, the players will pay entry fees only to partially cover the operational cost of the event), such an esports event will not be regulated by Amusement Business Act since it will not stimulate customers’ desire to gain profit by chance.

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