

THE GAMBLING LAW REVIEW

THIRD EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

THE GAMBLING LAW REVIEW

THIRD EDITION

Reproduced with permission from Law Business Research Ltd

This article was first published in June 2018

For further information please contact Nick.Barette@thelawreviews.co.uk

Editor

Carl Rohsler

THE LAWREVIEWS

PUBLISHER

Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER

Nick Barette

BUSINESS DEVELOPMENT MANAGERS

Thomas Lee, Joel Woods

ACCOUNT MANAGERS

Pere Aspinall, Sophie Emberson,
Laura Lynas, Jack Bagnall

PRODUCT MARKETING EXECUTIVE

Rebecca Mogridge

RESEARCHER

Arthur Hunter

EDITORIAL COORDINATOR

Gavin Jordan

HEAD OF PRODUCTION

Adam Myers

PRODUCTION EDITOR

Gina Mete

SUBEDITOR

Tessa Brummitt

CHIEF EXECUTIVE OFFICER

Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2018 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of May 2018, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – tom.barnes@lbresearch.com

ISBN 978-1-912228-34-8

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAWREVIEWS

THE ACQUISITION AND LEVERAGED FINANCE REVIEW
THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW
THE ASSET MANAGEMENT REVIEW
THE ASSET TRACING AND RECOVERY REVIEW
THE AVIATION LAW REVIEW
THE BANKING LITIGATION LAW REVIEW
THE BANKING REGULATION REVIEW
THE CARTELS AND LENIENCY REVIEW
THE CLASS ACTIONS LAW REVIEW
THE CONSUMER FINANCE LAW REVIEW
THE CORPORATE GOVERNANCE REVIEW
THE CORPORATE IMMIGRATION REVIEW
THE DISPUTE RESOLUTION REVIEW
THE DOMINANCE AND MONOPOLIES REVIEW
THE EMPLOYMENT LAW REVIEW
THE ENERGY REGULATION AND MARKETS REVIEW
THE ENVIRONMENT AND CLIMATE CHANGE LAW REVIEW
THE EXECUTIVE REMUNERATION REVIEW
THE FINANCIAL TECHNOLOGY LAW REVIEW
THE FOREIGN INVESTMENT REGULATION REVIEW
THE FRANCHISE LAW REVIEW
THE GAMBLING LAW REVIEW
THE GOVERNMENT PROCUREMENT REVIEW
THE HEALTHCARE LAW REVIEW
THE INITIAL PUBLIC OFFERINGS LAW REVIEW
THE INSOLVENCY REVIEW
THE INSURANCE AND REINSURANCE LAW REVIEW
THE INTELLECTUAL PROPERTY AND ANTITRUST REVIEW
THE INTELLECTUAL PROPERTY REVIEW
THE INTERNATIONAL ARBITRATION REVIEW
THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW
THE INTERNATIONAL TRADE LAW REVIEW
THE INVESTMENT TREATY ARBITRATION REVIEW
THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW
THE ISLAMIC FINANCE AND MARKETS LAW REVIEW
THE LABOUR AND EMPLOYMENT DISPUTES REVIEW
THE LENDING AND SECURED FINANCE REVIEW
THE LIFE SCIENCES LAW REVIEW
THE MERGER CONTROL REVIEW
THE MERGERS AND ACQUISITIONS REVIEW
THE MINING LAW REVIEW
THE OIL AND GAS LAW REVIEW
THE PATENT LITIGATION LAW REVIEW
THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW
THE PRIVATE COMPETITION ENFORCEMENT REVIEW
THE PRIVATE EQUITY REVIEW
THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW
THE PRODUCT REGULATION AND LIABILITY REVIEW
THE PROJECTS AND CONSTRUCTION REVIEW
THE PUBLIC COMPETITION ENFORCEMENT REVIEW
THE PUBLIC–PRIVATE PARTNERSHIP LAW REVIEW
THE REAL ESTATE LAW REVIEW
THE REAL ESTATE M&A AND PRIVATE EQUITY REVIEW
THE RESTRUCTURING REVIEW
THE SECURITIES LITIGATION REVIEW
THE SHAREHOLDER RIGHTS AND ACTIVISM REVIEW
THE SHIPPING LAW REVIEW
THE SPORTS LAW REVIEW
THE TAX DISPUTES AND LITIGATION REVIEW
THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW
THE THIRD PARTY LITIGATION FUNDING LAW REVIEW
THE TRADEMARKS LAW REVIEW
THE TRANSFER PRICING LAW REVIEW
THE TRANSPORT FINANCE LAW REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADDISONS LAWYERS

ANDERSON MÔRI & TOMOTSUNE

BIRD & BIRD

BROWNSTEIN HYATT FARBER SCHRECK LLP

COLLAS CRILL

CUATRECASAS

DENTONS

FYMSA ADOGADOS

GVZH ADVOCATES

HASSANS INTERNATIONAL LAW FIRM

HERZOG FOX & NEEMAN LAW OFFICE

KALFF KATZ & FRANSSEN ATTORNEYS AT LAW

KRIDA LEGAL

MCCANN FITZGERALD

MELCHERS RECHTSANWÄLTE PARTNERSCHAFTSGESELLSCHAFT MBB

MEMERY CRYSTAL LLP

NESTOR NESTOR DICULESCU KINGSTON PETERSEN

NORDIC GAMBLING APS

PAUL HASTINGS LLP

PHARUMLEGAL

PORTILLA, RUY-DÍAZ Y AGUILAR SC

RATO, LING, LEI & CORTÉS – ADOGADOS

URÍA MENÉNDEZ
VELCHEV & CO LAW OFFICES
WISTRAND ADVOKATBYRÅ

CONTENTS

PREFACE..... vii
Carl Rohsler

Chapter 1 GAMBLING: A LEGAL AND PHILOSOPHICAL OVERVIEW 1
Carl Rohsler

Chapter 2 GAMBLING AND EUROPEAN LAW 11
Philippe Vlaemminck, Robbe Verbeke and Justine Van den Bon

Chapter 3 OVERVIEW OF US FEDERAL GAMING LAW 23
Behnam Dayanim, Reade Jacob and Edward J George

Chapter 4 ALDERNEY 42
Wayne Atkinson and Michael Lyner

Chapter 5 AUSTRALIA..... 51
Jamie Nettleton, Nicola Austin and Mia Corbett

Chapter 6 BELGIUM 64
Philippe Vlaemminck and Robbe Verbeke

Chapter 7 BRAZIL..... 76
Luiz Felipe Maia

Chapter 8 BULGARIA..... 88
Nadya Hambach

Chapter 9 CZECH REPUBLIC 97
Vojtěch Chloupek

Chapter 10 DENMARK..... 107
Henrik Norsk Hoffmann

Chapter 11	FRANCE.....	119
	<i>Alexandre Vuchot, Cathie-Rosalie Joly, Rami Kawkabani and Samy Smaoui</i>	
Chapter 12	GERMANY.....	133
	<i>Joerg Hofmann, Matthias Spitz and Jessica Maier</i>	
Chapter 13	GIBRALTAR.....	143
	<i>Andrew Montegriffo and Louise Lugaro</i>	
Chapter 14	INDIA	153
	<i>Vidushpat Singhania</i>	
Chapter 15	IRELAND	168
	<i>Alan Heuston and Seán Dowling</i>	
Chapter 16	ISRAEL.....	184
	<i>Yehoshua Shohat Gurtler</i>	
Chapter 17	JAPAN	190
	<i>Hitoshi Ishihara</i>	
Chapter 18	MACAO	196
	<i>Pedro Cortés and Óscar Alberto Madureira</i>	
Chapter 19	MALTA.....	206
	<i>Andrew J Zammit, Martina Borg Stevens, Nicole Attard and Yasmine Aquilina</i>	
Chapter 20	MEXICO	220
	<i>Carlos F Portilla Robertson and Iván Guerrero Sánchez</i>	
Chapter 21	NETHERLANDS.....	231
	<i>Alan Littler</i>	
Chapter 22	NEVADA	241
	<i>Sonia Church Vermeys and Erin Elliott</i>	
Chapter 23	POLAND.....	252
	<i>Piotr Dynowski and Michał Salajczyk</i>	
Chapter 24	PORTUGAL.....	263
	<i>Duarte Abecasis and Leonor Catela</i>	

Chapter 25	ROMANIA	272
	<i>Ana-Maria Baciú and Cosmina Simion</i>	
Chapter 26	RUSSIA	288
	<i>Alexander Skoblo and Ekaterina Merabishvili</i>	
Chapter 27	SPAIN.....	294
	<i>Pablo González-Espejo and David López Velázquez</i>	
Chapter 28	SWEDEN.....	307
	<i>Erik Ullberg, Christel Rockström and John Olsson</i>	
Chapter 29	UNITED KINGDOM	317
	<i>Carl Rohsler</i>	
Appendix 1	ABOUT THE AUTHORS.....	333
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....	351

PREFACE

Welcome to the third edition of *The Gambling Law Review*.

I was very pleased last year that we managed to increase the coverage of the guide from 16 chapters to 25. This year I am pleased again to say that we have increased coverage to 29 chapters, including new contributions from four important jurisdictions – Bulgaria, France, Macao and the Netherlands. I am delighted to welcome the new authors and thank them for their contribution, as I am also very pleased to thank those who have found the time and resources to continue to make a contribution to this work. We are getting fatter!

What are the aims of this book? There are several. First and foremost, to provide a short summary of the gambling law of the jurisdictions in question. Second, to achieve that in a format that is uniform enough to allow comparison between the different legal systems but also flexible enough to recognise that gambling law springs from different sources in different jurisdictions – in some countries it is founded in the criminal law, in other places it forms part of civil or administrative law and, of course, it is sometimes rooted in a common law and sometimes in a civil code tradition. The third aim is to allow practitioners in the field to be updated on developments over the course of the year – with a section in each chapter dealing both with the main milestones of the past 12 months and the likely developments to come. Have we achieved that end? Of course, it is for others to judge – but I was heartened to meet a fellow professional at this year's International Casino Exhibition in London who congratulated me for 'that little grey book', which he said he frequently consulted and found 'immensely useful'. And not only useful, but up to date and freely available online, as a resource for everyone.

Which brings me to the fourth (and normally unspoken) aim of this book, which is to showcase the work of some of the leading gambling lawyers across the world, without whom this book would not exist. Each has given their time and considerable experience to produce something comprehensive and digestible – and as a summary of their own thoughts and work in the field. And so, may I make this suggestion to readers from the gambling world on behalf of my co-authors? If you find this Review useful, then please give them a call, safe in the knowledge that you will get more of the same quality.

The gambling world has been a busy place again in the past 12 months. What are the key themes? Let me pick three.

New jurisdictions

More and more governments are turning their minds to the regulation of gambling. The most obvious shift is in the United States, where the Supreme Court has just been considering the constitutional implications of a ban on gambling. During the preparation of this Preface, we have heard that the US Supreme Court has ruled 6:3 that the Professional and Amateur

Sports Protection Act of 1992 violates the 10th Amendment to the US Constitution, and therefore should be struck down. The 10th Amendment protects the power of individual states to make their own laws, in all circumstances where the Constitution does not explicitly give power to the federal government. It is therefore anticipated that the Supreme Court decision will mark a new turning point in the United States' relationship with gambling, more than a decade after UIGEA caused tremors across the world. There are plenty of states with draft legislation awaiting such a decision, and we will have to see the reaction of sports bodies seeking to find a way to tap into their share of a rich new market. The US is surely one of the most lucrative potential markets for sports betting – not only because it is a wealthy nation, but because it is one in which sport is marketed and televised more than in perhaps any other country in the world. With baseball, American football, basketball and ice hockey, there are four incredibly well-followed and, above all, data-rich sports that would be the subject of a very substantial betting market. Interesting times.

The US is not the only place where change is coming. We have seen new laws progressing in many countries, including Ireland, Sweden and Switzerland, and a host of significant shifts in legislation in countries as far apart as Australia and Slovenia. Further, there has been a continuing flow of decisions from the Court of Justice of the European Union in relation to the gambling regimes across Europe, and let us not forget the Asian markets, including India, where the pace of change has been somewhat slower (but the potential prize is very substantial indeed).

Regulators keep getting tougher

It feels as though regulators and governments are becoming better organised and tougher on operators. Although there are still places where 'soft touch' regulatory regimes persist, more regulators are making life harder for operators, with new rules and higher penalties for non-compliance. There is an increasing focus on financial crime, money laundering and social responsibility. Industry has reacted by improving its standards, but still feels embattled against waves of criticism, which in some cases seem to impose a higher threshold than for other adult industries. Indeed, I would argue that the increased levels of regulation are more the product of an increased ability to regulate, rather than an increased need. For one thing, although the amount of regulated gambling going on in the world is certainly increasing, that may reflect the fact that regulation is more effective, and that gambling that had previously operated on a black market basis is now being brought within the fold. And even if the amount of gambling going on in the world is increasing, there is no substantial evidence that the amount of problem gambling or underage gambling is on the rise.

Traditional barriers are dissolving (again)

One of the most interesting features of the international gambling industry over the past two decades is the way that it has continued to engage in paradigm shifts. After many centuries of a land-based tradition, the internet and mobile communication created an international betting market for the first time. And now, just as we are getting used to that, new developments are changing that model again. For example, bitcoin and cryptocurrency technology, which was in its infancy only a couple of years ago, is now becoming mainstream – already being used by some operators and requiring serious consideration by regulators. Many still hold the view that there are hidden dangers with such cryptocurrencies – and of course they are not without risk. However, they also provide some interesting possibilities in

terms of ensuring provenance and traceability of funds and even that the tokens can only be used by those over the age of 18.

We have also witnessed a growing convergence of gambling and game playing, a development that throws up both paradoxes and new challenges. Studies show that for many the entertainment experienced by playing games is not lessened if there are no monetary stakes, and so one must ask whether social gaming represents a fundamentally new chapter in gambling psychology and practice. Equally, the rise of social gaming models blurs the barrier between what is regulated and what is not – with e-sports, and in game rewards ('loot boxes') also confusing the picture. Traditional models and expectations of what gambling is and how that form of entertainment is monetised are radically changing – and that leads to very important questions about whether the limits of regulation need to be redefined.

In the context of these changes, an annual review of the world of gambling law surely has an important place. I close by thanking my co-authors and the editorial team at The Law Reviews for their organisation and encouragement.

Carl Rohsler

Memery Crystal

London

May 2018

JAPAN

*Hitoshi Ishihara*¹

I INTRODUCTION

On 15 December 2016, the Act Promoting Implementation of Specified Integrated Resort Areas (the Act) was enacted in the Japanese Diet session with an aim to legalise gambling to be operated by private entities in Japan, which is the latest development in a long-standing debate on whether to legalise and permit casinos in designated areas of the country. The Act aims to promote the establishment of an integrated resort (IR) (and casino) in Japan. Therefore, it only has 23 articles laying out the very basic concepts.

Among the small number of articles, one specifically says that the measures to implement the IR should take place within one year. The government intended to submit the subsequent implementation bills to the Diet session in 2017 and established a body called the IR Promotion Advisory Council, tasking them to formulate the basic concepts for the implementation of the IR. In response to this, in the summer of 2017, the Advisory Council issued a white paper setting out various matters (the White Paper).

However, the implementation bills were not passed during the 2017 Diet sessions because of the re-election that took place, which limited the opportunity to discuss these bills. The Japanese government now intends on legislating these implementation bills during the 2018 Diet session, which is taking place at the time of writing.

II CURRENT STATUS AS TO THE LEGALITY OF GAMBLING IN JAPAN

Under the current Japanese legislation, gambling, in general, is prohibited under Article 185 of the Penal Code, with the exception of betting on something for momentary amusement or specific events or sports permitted under special laws, which are:

- a* the four public sports – horse racing, bicycle racing, powerboat racing and motorcycle racing – all of which are run by local governments or government corporations;
- b* the public lottery; and
- c* Japanese Football Pools.

Licences are required to operate these forms of gambling activities, which under the current legislation, are granted only to local governments or government-related entities.

In this context, Article 185 of the Penal Code provides that a person who gambles shall be punished by a fine or a petty fine of not more than ¥500,000, unless the item that is placed

¹ Hitoshi Ishihara is a partner at Anderson Mōri & Tomotsune.

on the bet is that of momentary amusement. The term 'gamble' is understood as 'an act where more than two persons bet on an outcome of a contest of chance to contend for a prize in the form of property or asset' (Tokyo High Court, 28 November 2006).

The 'outcome of a contest of chance' means an outcome that is something unpredictable or out of the contestants' control. The Old Supreme Court case of 13 November 1911 found that if the outcome of a contest depends upon an element of chance to any degree, the outcome shall fall under the 'outcome of a contest of chance', even if such outcome depends on certain skills of the contestants (except when the outcome is evident in advance on the basis of any gap between the contestants' skills).

Accordingly, Japanese court precedents have found that the outcomes of games of 'igo' (Old Supreme Court case of 10 June 1915), mah-jong (Old Supreme Court case of 28 March 1935) and Japanese chess (shogi) (Old Supreme Court case of 21 September 1937) all fall under the category of 'outcome of a contest of chance'.

To 'bet to contend for a prize in the form of property or asset' means the winner wins and the loser loses a prize in the form of property or asset. If one of the contestants does not lose any property, that is, he or she has no risk of losing his or her property, the contestants are not contending for a prize in the form of property or asset (Old Supreme Court case of 30 April 1917 et al).

Article 186 Section 2 of the Penal Code further prescribes that a person who, for the purpose of profit, runs a place for gambling or organises a group of habitual gamblers shall be punished by imprisonment not less than three months but not more than five years. The term 'running a place for gambling' is understood to mean providing, as a host, a certain place for gambling that is under the host's control (Supreme Court Case of 14 September 1950). In this context, 'certain place for gambling' is understood to mean that a physical location or actual gathering of the players to such location is not required (Supreme Court case of 28 February 1973).

The crime of running a place for gambling also requires running a place for gambling and 'obtaining profit' (Article 186 Paragraph 2) and the term 'obtain profit' is understood to mean having the intention of obtaining illegal financial benefit (in the form of fees, commissions or others) in consideration.

The Penal Code has a certain carve-out stating that gambling will not constitute a violation of the Penal Code, if the 'item which is placed on bet is that of momentary amusement'. This term is understood to be something of very low value that will not unduly stimulate a person's passion for gambling. The Supreme Court of Japan, however, has found that cash does not, regardless of its amount, fall under the definition of 'momentary entertainment'.

Thus, gambling that is legally permitted under the current Japanese law is limited to gambling facilitated by licensed public entities, and interpretations of gaming and gambling regulations to date have been generally consistent with this general rule.

III OFFSHORE GAMING SERVICES

On 1 November 2013, a deliberation concerning the legality of online gambling was conducted in the Japanese Diet and, upon such deliberation, the government presented its view concerning online gambling, which is that participating in online gambling operated outside Japan through the internet from Japan (or participating in casinos outside Japan airing live through the internet from Japan) will constitute gambling in Japan if a part of such

gambling was conducted within Japan, such as participating through the internet from one's home in Japan (i.e., the person in Japan was not physically present at the gambling house overseas).

Accordingly, in 2016 there was a case where several players located in Japan who were playing an online gambling game distributed by an offshore online gaming service provider (Smart Live Casino) through a server located outside of Japan (United Kingdom) were convicted of illegal gambling. In this case, it was reported that the relevant gambling website had descriptions written in Japanese since September 2014 and was open from early evening to after midnight Japan time and, in addition to that, the dealer was Japanese and the users were able to talk with the dealer in Japanese.

It is considered that these factors formed the grounds for the website to be considered as providing services that were targeted at Japanese people. It should be noted, however, that this case was dealt with under summary proceedings, which are not a formal trial at a summary court. A trial in these proceedings takes place only with an examination of documents submitted (no public trial including witness examination takes place) while parties are not present. Therefore, it is unclear whether the court would come to the same conclusion in a formal trial. In fact, despite some of the players being convicted of illegal gambling, the Japanese Public Prosecutors Office decided that it would drop charges against one of the players who did not agree to summary proceedings, and therefore, it is unclear whether the court would come to the same conclusion if this was tried in the formal trial. Also, to the best of our knowledge, no action was taken against Smart Live Casino.

IV CURRENT STATUS OF THE LEGALISATION OF CASINOS IN JAPAN

In light of the general prohibition on gambling, official discussions on whether to legalise casinos in Japan have been taking place for some time now, dating back to 2006 when the Liberal Democratic Party (LDP) produced a report entitled 'Japan's Basic Policy concerning the Introduction of Casino Entertainment'. These discussions have continued since then, and in 2013, the LDP and certain other members of a cross-party group called the 'Alliance for the Promotion of International Tourism' (the Alliance), including as its members Shinzo Abe, the current Japanese Prime Minister, and Taro Aso, the current Treasurer and former Prime Minister, submitted the bill to legalise casinos to the Japanese Diet, which was subsequently passed at the Japanese Diet session on 15 December 2016.

i The Act

The Act aims to carry out a two-stage legislative process by (1) passing an act to facilitate the development of integrated resorts and (2) passing subsequent acts to actually implement integrated resorts.

Since the Act focuses only on facilitating the development of integrated resorts, it contains only 23 articles, which describe the basic policy and the process for the introduction of casinos in Japan. Thus, the passage of various subsequent series of bills will be necessary in order to actually legalise the operation of casinos in Japan. Subsection ii, *infra*, gives a brief explanation of the Act's key points.

ii The Act's aim to legalise only land-based casinos

Article 1 of the Act provides that:

[i]n light of the fact that promoting implementation of Specified Integrated Resort Areas contributes to the development of tourism and local economies... the purpose of this act is to set out the fundamental principles, fundamental policies and other fundamental matters relating to the promotion of the implementation of Specified Integrated Resort Areas...

Article 3 of the Act further provides that:

[t]he implementation of the Specified Integrated Resort Areas shall be promoted on the basis of achieving international competitiveness and attractive extended stay sight-seeing visits.

As indicated above, Articles 1 and 3 illustrate that the Act in its current form is only contemplating legalising casinos that people physically visit, thereby promoting tourism, and is not necessarily aiming to legalise online casinos.

In response to the passage of the Act, an official discussion has started at a cabinet meeting to establish a consolidated measure to address gambling and gaming addiction in general, which not only addresses gambling (i.e., casinos, lotteries and public sports) but also certain financial commodities (such as foreign exchange transactions), or *pachinko* and other gaming.

Therefore, it is possible that during the course of the discussion to address gambling and gaming addiction problems, further discussions may arise with regard to legalising online casinos through different legislation.

iii Private entities as casino operators; potential cap to the casino floors

Article 2.1 of the Act expressly provides that a specified integrated resort will have 'casino facilities (limited to those established and operated in the Specified Integrated Resort Areas by private entities . . .), convention facilities, recreation facilities, exhibition facilities, lodging facilities and other facilities accepted to contribute to the promotion of tourism operated by a private entity', thereby opening the doors for private entities to become casino operators. On the other hand, the Act expressly excludes public entities from establishing and operating casino facilities.

The Act includes no provision restricting the operator to an entity incorporated in Japan; therefore, foreign operators should be very much welcomed.

In this context, the White Paper states that there should be a limit to the floor size of the casino within the IR and that this should be determined 'taking into consideration of the Singapore casino'.

While the White Paper is silent on the exact ratio or figure, setting a limit on the size of the casino means the size of the IR itself may be affected. And this would affect the local governments, especially those that have contemplated a large-size casino and IR with a large-size investment from the private operators.²

2 Subsequently, the Working Team of the government agreed in April 2018 that the gross floor area of a casino shall be 3 per cent of the IR or less.

iv Multiple layers of the selection process

Article 2.2 of the Act provides that a specified integrated resort area should be ‘an area certified by the competent minister as an area where a Specified Integrated Resort can be established, based on the application of the local government’.

The wording in Article 2.2 indicates that there will be at least two layers of the selection process: (1) selection by the competent minister of the local government where the integrated resort would be established; and (2) selection by the local government of the operator to operate the casino.

The Act is silent as to which selection procedure will precede the other (the Act is also silent as to which ministry will be in charge, since Article 11 of the Act provides that the ‘Casino Control Committee shall be established as an external organ of the Cabinet Office’, it is widely assumed that the head of the Cabinet Office (i.e., the Prime Minister) would be the competent minister in question); however, the White Paper has given guidance to this issue that, in principle, the selection of an operator by the local government will come first since the competent minister would not be able to select the local government where an integrated resort is to be established by the location alone, and without knowing the actual plans contained in the application of the local government. As such, an applicant operator must propose a plan that is appealing and attractive to the local government, so that the local government will prepare the application to be submitted to the competent minister adopting such plan. The local government’s application adopting the applicant operator’s plan must then be selected by the competent minister as the location that is appropriate to be designated as a specified integrated resort area.

In this context, the White Paper is consistent with the ongoing discussion to seek careful and phased introduction by limiting the number of casinos to be established, as IRs are considered facilities that should not be established all over the country. Therefore the number of facilities and the areas in which they are initially established shall be on a trial basis, which may be gradually increased. In doing so, the White Paper maintains the position of considering establishing them in large cities as well as local regions. There are controversial views as to the actual number of locations where the IRs are to be established initially, ranging from two to three (which was originally discussed) to four to five (which was very recently proposed by the project team established by the ruling party). The White Paper also expressly states that there should be ‘1 casino for 1 IR’, so the current thinking is not having multiple casinos competing against each other in a single location, but rather have such competition during the selection process.

A frequently asked question is where the first location for integrated resorts will be; however, since there will be a selection process for the locations, while the mass media speculate and try to predict, the actual location will be chosen based on numerous factors including the political conditions at the time of selection.

V THE SELECTION CRITERIA OF A CASINO OPERATOR AND THE EFFECT ON POTENTIAL FOREIGN APPLICANTS

The Act provides first that the specified integrated resort areas shall be promoted ‘by taking advantage of regional characteristics and the innovation and vitality of the private sector’s ability to contribute to the development of the regional economies and redistribute to the community the proceeds of the healthy casino facilities’ (Article 3), and also that ‘[t]he

government shall take necessary measures so that the Specified Integrated Resort Areas will have the features central to establishing genuine internationally competitive and attractive tourist destinations while utilising regional characteristics' (Article 6).

Based on these provisions in the Act, it can be surmised that a foreign operator considering whether to participate in the selection process needs to prepare a proposal that is appealing to the local government, not only from a financial perspective, but also from the perspective of understanding the regional characteristics and the needs of the community.

Having to include this level of specificity in an application could be one of many cross-border difficulties that a potential foreign operator may face, since the regional characteristics and the needs of the community, especially in Japan, may be quite different from that in the operator's own country and other regions of operations. Additionally, the needs of the community and regional characteristics in Japan are different between regions that qualify as an 'urban-type' integrated resort where the number of citizens and infrastructure are well established, compared to 'suburban-type' regions, which are tourist destinations for vacation purposes.

Further, Article 7 of the Act provides that:

[t]he government shall utilise the funds, management skills and technical skills of the private sector, and take other necessary measures so that the implementation of the Specified Integrated Resort Areas will strengthen the international competitiveness and stimulate other areas of the economy, such as by improving the country's tourism industry and increasing job opportunities.

Therefore, although there is no nationality requirement for a casino operator, a foreign operator applicant must prepare a proposal that is not only financially feasible, but that can also improve Japan's tourism industry and increase job opportunities.

VI CONCLUSION

This chapter makes clear that Japan is at a very early stage of discussion regarding the legalisation of casinos, and the Act is not sufficient to permit the operation of a casino, for the law itself states that the 'necessary legislative measures for this purpose should be taken with the intent of doing so within one year after the enforcement of this act' (Article 5). Therefore, various legislative measures need to take place to actually implement the establishment of integrated resorts.

While the Act provides that these measures should take place within one year, and the government currently intends to submit the subsequent implementation bills during the Diet session in 2018, which is taking place at the time of this writing, it is possible that debates on how to implement the law might delay such measures, particularly because of the opposition's strong concerns expressed with respect to various matters, including the measures to be taken against gambling addiction problems.

ABOUT THE AUTHORS

HITOSHI ISHIHARA

Anderson Mōri & Tomotsune

Hitoshi Ishihara is a partner at Anderson Mōri & Tomotsune. As the sole Japanese attorney admitted to the International Masters of Gaming Law (IMGL), Mr Ishihara has extensive focus and knowledge concerning Japanese gaming law, including the anticipated law change to legalise casino operations in Japan, and has been recognised as the Japanese Gaming Lawyer of the Year by multiple sources in recent years.

Mr Ishihara also provides a variety of legal services to his clients establishing and doing business in Japan, with an exceptional focus on cross-border transactions. Also, in the intellectual property field, Mr Ishihara has extensive experience in IP licensing and transactions, and also provides advice on regulatory issues.

His distinctive English skill, backed by over seven years' experience in the United States, enables him to effectively bridge the linguistic and cultural gap faced by his clients.

He is admitted in both Japan and California (United States).

ANDERSON MŌRI & TOMOTSUNE

Otemachi Park Building
1-1-1 Otemachi, Chiyoda-ku
Tokyo 100-8136
Japan
Tel: +81 3 6775 1114
Fax: +81 3 6775 2114
hitoshi.ishihara@amt-law.com
www.amt-law.com/en



ISBN 978-1-912228-34-8