

THE GAMBLING LAW
REVIEW

SIXTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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SIXTH EDITION

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PREFACE

Again, the public showed that they would bear their share in these things; the very Court, which was then gay and luxurious, put on a face of just concern for the public danger. All the plays and interludes which, after the manner of the French Court, had been set up, and began to increase among us, were forbid to act; the gaming-tables, public dancing-rooms, and music-houses, which multiplied and began to debauch the manners of the people, were shut up and suppressed; and the jack-puddings, merry-andrews, puppet-shows, rope-dancers, and such-like doings, which had bewitched the poor common people, shut up their shops, finding indeed no trade; for the minds of the people were agitated with other things, and a kind of sadness and horror at these things sat upon the countenances even of the common people. Death was before their eyes, and everybody began to think of their graves, not of mirth and diversions.

Daniel Defoe. *A Journal of the Plague Year*

A year ago, I began the preface to the fifth edition by reminding readers of the most famous epidemic that ever troubled Britain: the Great Plague of 1665, which closed the theatres and silenced the ‘jack puddings and merry Andrews’ in London for a whole year. Writing of that same event years later, Daniel Defoe reminds us that despite the passing centuries, the human impact of plague has actually not changed that much. In another passage from his journal, he remarks how he could only pass along the king’s highway if he obtained a paper from a magistrate to say that he was in full health. The judiciary may have been replaced by the PCR swab or the vaccine passport, but the feeling that the public does not enjoy its normal liberties is scarcely different then than now. Another point that Defoe notes, and which we should not ignore, is that the effect of plagues is marked not in inconvenient days or months, but in decades. ‘Plague Bills’ showing the number of deaths in each parish were first published 1665, and the practice was not formally discontinued until 1679. And so, I begin the preface to the sixth edition of *The Gambling Law Review* in similar terms and circumstances as those of last year.

There have been many changes in gambling law and practice over the last 12 months, but, with perhaps a few exceptions (such as Ukraine), they have been of a minor nature, reflecting perhaps that governments have been so overwhelmed by the social and economic impact of the covid-19 pandemic, that they have simply not had the time to revise the intricacies of betting and gaming regulation. So, in many cases, the legal frameworks that applied in 2020 will still apply in 2021. But the chapters that we each write are designed not only to focus on the details of regulatory change but also to canvas broader themes and directions for the future, and so our authors have all had to try to describe what the future will hold, as well as the past 12 months.

Following that theme, I want in this Preface to talk not so much about gambling, but about the state of the world in which gambling exists and the macro-changes that we now face. In that regard, it seems to me that the question so often asked: ‘when things will get back to normal?’ is not really appropriate anymore. The pandemic has had such a sweeping change on the lives of those in the developed world, that not only have we been forced to break our old habits, but have had enough time to discover and develop new ones. So, no doubt we will go back to restaurants and bars again, and sometimes enjoy high street shopping or a trip to the gym. But there will also, undoubtedly, be permanent changes.

In short, the pandemic, like a world war or a crisis of resources, has created a paradigm shift, a step change. We could go back to our old habits and ways of working. But would that really be such a good idea? Should we want to? The First World War, for all its tragic loss of life, brought us into the modern world and forced societal change at the deepest level. The peace in 1918 brought with it a number of social and legislative changes in the UK of key importance in the century that followed. The Education Act of 1918 enforced a compulsory school-leaving age of 14, recognised special educational needs for the first time and introduced school meals. The Representation of the People Act 1918 allowed (certain) women the right to vote for the first time, and the Sex Disqualification (Removal) Act of 1919 prohibited an employer from excluding someone from a job on the basis of gender. The Ministry of Health Act 1919 created for the first time a minister of Health and made the health of citizens a government responsibility. These pieces of legislation were not the immediate effect of war, but the indicators of underlying changes in the way that society had come to view health, education and the role of women in light of the changes that war had wrought on the collective mind. There was no way back to the innocence of 1914, but there was also much to be gained from recognising that the pre-war period contained injustices and social unfairness that could no longer be tolerated in the post-war world.

If we assume that the current pandemic will resonate in socio-economic terms as loud and long as a major war then, as we emerge from its grip, it is useful to identify and predict the things that may change, and the opportunities that exist to establish new habits that will make our lives better and fairer. Identifying such changes and opportunities is very difficult. My own views are shaped by my perspective – which is a middle-aged professional asked to shoulder the minor inconvenience of homeworking, not a young bar-worker furloughed for almost a year, or a nurse on the front line of treatment and still less a Chinese worker from Wuhan – but let’s nonetheless try to uncover some of the themes.

i Geography – tectonic shifts in our domestic plan

Home/work

The most important collective discovery of the pandemic was our own homes. For millions, it ceased to be the place just to spend evenings and weekends and became the only focus of our lives. Many of us have toyed with the idea of working from home, (or rehearsed the uncomfortable conversation with our bosses about why we do not always need to be in the office). We always thought that we might be more efficient place to work, without a long commute, but there was never the empirical data to justify those theories. Now we have discovered what a year of work without a place of work feels like. The ‘To Let’ boards are springing up in urban centres, and thousands of professionals have experienced the freedoms and inconveniences of a different workplace: our bedrooms, studies, and kitchens. In 2019,

30 per cent of the UK's workforce had experienced working from home. By March 2021, the proportion had grown to 60 per cent.

The implications of this change are in my view very profound. While some are now advocating a return to office life in the summer of 2021, there is increasing evidence that the pandemic will lead to a permanent shift in the workforce away from urban centres and to more suburban and rural settings. Houses with space are more popular and generally cheaper than equivalent houses in towns. The need for large numbers of commuters to move each day to urban centres has been significantly reduced. In short, people will want to work from home more, and homes will feature as more important and valuable resources in our lives. Provided that the communications infrastructure can allow it, more of us will reduce our time in traditional places of work, and very substantially reduce the time travelling to our workplaces. This will have implications ranging from reduction in transport and carbon usage, to the development of smaller towns at the expense of larger cities. We will become a more disaggregated workforce. Over time, that disaggregation may not just challenge existing notions of work–life balance but also blur national boundaries. Once reliance on a physical workplace is diminished, and contributions to working life routinely come via remote communication, then one's workforce can not only be scattered across a country, but just as easily across a continent. We will need to see how employment and tax law deal with these challenges. But in some professional sectors at least, working from home is going to become part of the new normality. That poses challenges for government and infrastructure providers to ensure that our communications networks provide adequate bandwidth outside urban centres as well as within.

Home/school

The transition away from concentrated work spaces, to disaggregated working and living has some interesting impacts from a technological point of view. We have all become more adept at managing our own domestic IT systems, and fortunately by 2020 most companies' IT systems had developed the resilience to operate on a remote basis. So the transition to home working did not actually require very much in the way of new technology, just a greater acceptance of technology that was already there. To give one indicia, the number of daily active users of Microsoft Teams rose from 13 million in July 2019 to 115 million by October 2020.

Home also became school for many. Where once we worried about the number of hours our children were spending online, we were suddenly grateful that they were at least ready-trained digital natives. A whole young generation whose internet experience was limited to fun and games, began to use their PCs for lessons, exams, projects, Powerpoint presentations and multiparty video conferences with an ease that many of their parents could only envy. Perhaps we need to re-examine whether 'limiting screen time' is really an achievable or even desirable aim. And a young generation will have spent a formative year both working from home, and seeing their parents do the same. That generation has already had its 'home/workplace norms' set differently to the generation before. Thousands have seen the concept of leaving home to go to university completely altered – something that again may be a permanent shift, as we have all discovered that learning yoga, cookery or French are all perfectly possible at a distance. Examinations and ways of rating achievement more generally will also permanently change. The lesson for our educators, is that some types of

experience that had previously considered only to be suitable for ‘real world’ teaching could in fact be engaged with adequately (or even optimally) through remote technology. Again, it is not that these things were not possible before the pandemic – but just that they are now a widely accepted alternative.

Home – the new entertainment hub

This conveniently brings us to highlight home as the new hub of entertainment. Of course, our living spaces and mobile devices had become the venues for streamed music, entertainment, sport (and increasingly gambling). But in 2020, home also became our shopping mall, restaurant and bar. In the UK, between November 2019 and November 2020 online food delivery increased by 107 per cent. Conversely, by comparison with the number of seated diners in February 2020, the UK figures for February 2021 were reduced by 99.88 per cent. Even when and if those restaurants return, it seems to me that they will be differently regarded. Expectations in terms of what constitutes value for money will have been reset.

Shopping is both a necessary activity and for many a form of entertainment. So far as its necessities are concerned, we have moved profoundly from a ‘travel and browse’ to a ‘click and receive’ model. The level of service provided by online retailers supported by a much enhanced and digitally managed supply chain has provoked a revolution in the way that we shop. It will be interesting to see the effect that this has on what might be called ‘leisure shopping’ – including for lifestyle goods and clothes. Again, a decline in land-based retail has been occurring over the last decade, but the pandemic has surely had a permanent impact. As restrictions are removed there will no doubt be a resurgence of interest in the high street – but probably not to the levels seen before. While there will still be strong demand for public places to enjoy retail experiences, certain types of shopping (for example normal grocery shopping) may well permanently move to an online model. The question then is how, without the support of traditional tenants like supermarkets, fashion, consumer goods and bookmakers will be able to maintain their presence on the high street and in shopping centres.

What does this mean for land-based gambling? As with shopping generally, we have seen certain types of gambling product transfer substantially from a land-based to an online model. To take one example, National Lottery ticket sales that were predominantly retail based, declined by 18 per cent with the onset of the pandemic, but online registrations subsequently rose by more than 1.3 million. This change is actually a win-win situation for lottery operators and customer alike. The operator now has a direct relationship with customers and does not have to use a retail network to sell tickets or pay commissions. It can know its customer better, check spending patterns, cross market and observe potentially damaging behaviour. For the customer, purchase of tickets is rendered simple, tickets are never lost and numbers are automatically checked. In short, a product that was always very suitable for a remote medium has been pushed by circumstances from retail to online, and it seems unlikely that it will ever go back again. Will the same be true of betting shops adult gaming centres and casinos? I think that it seems clear that casinos will still be seen as entertainment destinations. But the future for adult gaming centres and retail bookmakers seems less certain.

Travel away from home

One sector that has been disproportionately affected by the pandemic is that of international travel. The future of that industry is very interestingly poised. On the one hand, there is

clearly a very large pent-up demand for tourist travel but, on the other, international travel brings with it a host of difficulties in terms of containment of the virus, and may also involve the public stepping outside its comfort zone. For every tourist eager to get back to normal holidays, there are others concerned by new variants. Restrictions on travel generally have had a significant impact on the world's carbon emissions (indeed we have seen the largest annual decrease in carbon emissions since 1900). So will we go back to a life of weekend breaks and convenience tourism? I think that the answer is probably 'yes, we will'. After all, at least for those in the northern parts of Europe and America, holiday travel involves one type of experience that cannot yet be delivered online – sunshine!

The picture for travel therefore seems a nuanced one: it will be harder to justify business travel, when we are not even commuting as much, but it seems likely that tourism will quickly revive to its pre-pandemic levels. Such travel will of course include the traditional gambling and sport hotspots, and hopefully attendance at sporting and tourist event will soon recover – something very much needed by many economies that have suffered profoundly in the past year.

ii The richer and poorer

The pandemic has caused a monumental economic shock. The FTSE, Dow Jones and Nikkei all saw huge losses in the early months of 2020, with the FTSE dropping 14.3 per cent during 2020, its worst performance since the credit crisis of 2008. The announcement of vaccines has caused many of the major indices to rise sharply, many to well above pre-pandemic levels, but stock prices are to some extent speculative reflections of future hopes, and do not adequately reflect the huge long term borrowing in which almost every government has had to engage. Those who print money, have placed their reputations on the line, and over the next decade are either going to have to grow or tax their way out of the crisis. Some extra burden will inevitably fall on the public.

At the household level, the pandemic has not treated everybody equally. Hundreds of thousands have lost their jobs, spent their savings and face an uncertain future. The burden has fallen particularly heavily on the young, who are most likely to be those working in the hospitality and leisure industries. By contrast others have done relatively well. In the UK, there are reports of as many as 9 million 'unexpected savers' who have faced a combination of either working from home or having their incomes supplemented by furlough schemes, and at the same time have been unable to spend anything on entertainments. Certainly, unlike other recessions, there is no 'systemic weakness' in the economy. Strangely, 2020 has seen not only record debts, but also record levels of personal savings.

Thus, while currency of all gambling – leisure spend – has been significantly reduced, in many cases it is a question of fun postponed rather than removed altogether. In the UK, the beginning of the pandemic came serious warnings from regulators asking operators to ensure that their customers, often bored, solitary and impoverished by loss of employment, did not succumb to excess gambling. So what happened? The latest statistics from the UK Gambling Commission (January to November 2020) showed no significant increase in gambling, despite the stories peddled by the media. There was, as might be expected, a continued growth in online gambling, and equivalent decline in the use of retail premises for bookmaking. But these trends are probably what one would have expected whether there was a pandemic or not. It is curious how constant gambling behaviour is in our society.

All of us have had our views changed over the past 12 months, and all of us have tried to maintain a sense of normality in unusual circumstances. It will be very interesting to see

how our society changes as a result. But in the meantime, our group of author-lawyers have at least been able to keep busy working to serve our clients, and monitor developments in this fascinating and evolving area of law.

I wish to thank my contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. *The Gambling Law Review* now contains 33 chapters, and I hope that next year's guide will cover still more. I also add a note of personal thanks to those in my own domestic and work bubble, my partner Vanessa and my son Louis, who have both had to put up with more of me in the last 12 months than anyone rightly should have to suffer, and to whom therefore I dedicate my own part in this year's edition.

Carl Rohsler

Memery Crystal

London

May 2021

JAPAN

*Hitoshi Ishihara*¹

I OVERVIEW

i Introduction

On 27 July 2018, the Japanese Diet passed the Act for Development of Specified Complex Tourist Facilities Areas (the Act), which legalises gambling to be operated by licensed private entities in certain designated locations within Japan.

The passage of the Act has garnered strong interest domestically and internationally, as it allows the licensed private entities to operate a ‘Complex Tourist Facilities Area’, more commonly referred to as an ‘Integrated Resort’ (IR), which by definition under the Act shall include a casino (Article 2 of the Act). As described more in Section II, although the Japanese Penal Code (Act No. 45 of 1907) generally prohibits any form of gambling, which to date has only been allowed in connection with public sports and lottery, the Act explicitly legalises gambling in a certain designated area by excluding the application of the Penal Code.²

While the Act delegates many aspects to the determination by the Cabinet Order and other subordinate rules (in fact there are 331 items that are left for the government to determine), the Act sets out the overarching principles regarding the following matters:

- a* framework regarding the implementation of an IR;
- b* regulations regarding the casino (gambling) and casino related business (such as the facilities and equipment);
- c* financial affairs; and
- d* overseeing bodies and penalties.

While there is no IR established or casino licence issued at the time of writing, the process is currently underway for the establishment of the first IR/casino in Japan. Below are some of the key features that should be of interest to those who are considering entering into the Japanese casino market, and also a brief guidance on which types of business would require licensing or certification, what sort of policies and agreements are necessary for the implementation of an IR and the effective date regarding the various portions of the Act.

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

2 Article 39 of the Act.

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 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’.³

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’,⁴ mah-jong⁵ and Japanese chess (shogi)⁶ 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.⁷

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.⁸ 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.⁹

3 Tokyo High Court, 28 November 2006.

4 Old Supreme Court case of 10 June 1915.

5 Old Supreme Court case of 28 March 1935.

6 Old Supreme Court case of 21 September 1937.

7 Old Supreme Court case of 30 April 1917 et al.

8 Supreme Court Case of 14 September 1950.

9 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’¹⁰ 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.

The passage of the Act opens the door for gambling facilities 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.

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 through a server located outside of Japan 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. Also, to the best of our knowledge, no action was taken against an overseas operator.

¹⁰ Article 186, paragraph 2 of the Penal Code.

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. Subsequently, on 27 July 2018 the Japanese Diet passed the Act, which legalised gambling to be operated by licensed private entities in certain designated locations within Japan. In this Chapter, some of the issues are just presented without further analysis because the IR Development Act delegates, to a substantial extent, detailed provisions to Cabinet Order, Order of the Ministry of Land, Infrastructure, Transport and Tourism and the Casino Administration Committee’s rules, and at present, it has not been made clear how the Act is to be operated in practice.

i Key features of the Act

While every aspect of the law is important and it is difficult to distinguish which features are the key and which features are not (and this would depend in part on the particular perspective or interest one has in this subject), below are some of the key features of the Act that have been frequently questioned and discussed during the legislative process.

Facilities to be established within an IR

Under the Act, an IR is referred to as ‘Specified Complex Tourist Facilities’, which includes the following facilities,¹¹ each of which is required to meet the standards specified by Cabinet Order:

- a* casino facilities;
- b* international convention facilities that promote hosting of international conventions and serve for smooth hosting of such conventions;
- c* facilities to hold exhibitions, trade fairs and other events that provide smooth hosting of international-scale exhibitions, trade fairs or other events;
- d* facilities that contribute to more attractive tourism in Japan by hosting performances or other activities that take advantage of Japanese tradition, culture, art or other features;
- e* facilities that contribute to the promotion of tourism in Japan by properly providing information about tourist attractions in each region and also providing one-stop services to arrange transport, accommodation and other matters necessary for sight-seeing visits to each region;
- f* lodging facilities that meet the sophisticated and diversified needs of users; and
- g* in addition to the foregoing, facilities that otherwise contribute to promoting tourism by domestic and foreign tourists.

11 Article 2(1) of the Act.

Number of IRs to be established

The number of IR areas shall be limited to three for the time being.¹² However, after five years have elapsed from the date of the first certification, the government shall review the status of enforcement of the Act and shall take necessary measures (if any) based on the results thereof. In this context, the number of IR areas will be specifically reviewed after seven years have elapsed from the date of the first certification.¹³

Size of casino facilities

While the Act is silent on the actual limitation on the size of casinos as this has been relegated to the Enforcement Order (Article 41 of the Act), the Enforcement Order that was issued in March 2019 limited the gross floor area for a casino in IR facilities to 3 per cent or less.¹⁴

The basis of the calculation shall be 3 per cent of the 'gross floor area' and not the land area, which should ensure the casino is 'only a part of the facilities'.

Term of licence

The term of a casino licence shall be three years from the grant date of licence,¹⁵ which may be renewed for successive three year periods.¹⁶ The area development plan, which would be a prerequisite for the casino licence, also needs to be certified (and renewed) under a separate procedure, which is outlined below in more detail.

Limitation on the number of times of entry and means to verify identity

Chapter VII of the Act provides for a strict limitation on the number of times of entry and entry fee to prevent problem gambling. While there is no limitation on the number of times of entry for non-Japanese residents, the Japanese residents are limited to three times in seven days and 10 times in 28,¹⁷ and 'my number cards' shall be utilised for the verification of identity and the number of times of entry.¹⁸

Entry fee

The entry fee will be imposed on Japanese residents in the amount of ¥6,000, half of which shall be paid to the national government¹⁹ and the other half to the local government.²⁰

12 Article 9 of the Act.

13 Article 4 of Supplementary Provisions to the Act.

14 Enforcement Order regarding the Act for Development of Specified Complex Tourist Facilities Areas, Article 6.

15 Article 43(1) of the Act.

16 Article 43(2) and (6) of the Act.

17 Article 69 of the Act.

18 Article 70 of the Act.

19 Article 176 of the Act.

20 Article 177 of the Act.

Levy

While there was a discussion of whether a progressive levy system could be imposed, since this may reduce the incentive for entities to expand their business by additional investment and otherwise risks discouraging investment to realize the commonwealth, the levy was fixed at the rate of 30 per cent of gross gaming revenue, half of which shall be paid to the national government²¹ and the other half to the local government.²²

Restriction on profit sharing of gaming revenue

A casino business operator (as explained in the following Section) is prohibited from entering into contracts that do not fall under certain criteria, one of which is that the provisions of such contract shall not stipulate payment of an amount calculated in proportion to the GGR nor any other amount calculated based on all or a part of the GGR.²³

ii Persons, entities, policies and agreements of significance under the Act

Since the casino operation that would be conducted within the IR will be excluded from the general prohibition of gambling, the people and entities that take part in the IR operation will be subject to strict regulation.

iii Key operators

While the regulation mostly concerns the IR operators and their shareholders, it is possible that the operator of the IR and the ownership of the underlying land, facility and equipment are different. The Act provides for such cases, each of which have different licensing requirements.

Establishment and operation business operator

An entity that conducts business to establish and operate an IR (and other businesses incidental to the operation of an IR) is categorised as an establishment and operation business operator.²⁴ An establishment and operation business operator is prohibited from engaging in any business other than the establishment and operation of such IR, so this entity needs to be a SPC.²⁵

Casino business operator

An establishment and operation business operator who conducts casino business by obtaining a licence from the Casino Administration Committee is categorised as a casino business operator.²⁶

- Here, the term ‘casino business’ means a business that performs the following services:
- a Services for conducting casino gambling with customers or having it conducted between customers in casino facilities. The methods and types of gambling to be admitted will be specified in the Casino Administration Committee’s rules as ones that are reasonably found to be acceptable in Japan in terms of conventional wisdom from the perspective

21 Article 192 of the Act.

22 Article 193 of the Act.

23 Article 94(i)(e) of the Act.

24 Article 2(4) of the Act.

25 Article 18(1) of the Act.

26 Article 2(9) of the Act.

of ensuring public confidence in sound casino business management and that gain the understanding of the public, considering how similar acts are conducted in foreign countries.

- b Services to conduct exchange trading involving transfer of a customer's fund between the customer's account, accepting from and lending money to a customer and currency exchange (specified financial business). In this context, the banking act is not applicable to specified financial business²⁷ and a casino business operator may not charge interest through lending money.²⁸

Since only an establishment and operation business operator can obtain a licence as a casino business operator, the establishment and operation business operator and casino business operator for an IR must be identical.

Facilities offering business operator

A facilities offering business operator is an entity that offers establishment and operation business operators the services to maintain (including installation, repair and expansion) the group of facilities that constitute an IR in an integrated manner if the establishment and operation business operator does not hold ownership of such facilities.²⁹ If a facilities offering business operator offers casino facilities for use, this requires a separate licence from the Casino Administration Committee. Similarly to the establishment and operation business operators, casino facilities offering business operators are prohibited from engaging in any business other than the facility offering business of the IR, so this entity needs to be a SPC.³⁰

Rightholder over underlying land

A rightholder over underlying land is the entity that holds the ownership, superficies and other rights aimed to use and gain revenues from such rights or the rights aimed to acquire such rights with respect to the underlying land of the IR by obtaining authorisation from the Casino Administration Committee.³¹

Casino-related devices manufacturer

A casino-related devices manufacture is an operator conducting the business of manufacturing and selling or lending of casino-related devices by obtaining permission from the Casino Administration Committee.³²

27 Article 76(3) of the Act.

28 Article 85(3) of the Act.

29 Article 2(6) of the Act.

30 Article 18(2) of the Act.

31 Article 2(16) of the Act.

32 Article 142(2) of the Act.

Major shareholders

Each major shareholder of the casino business operator will require authorisation from the Casino Management Committee.³³ The threshold for this purpose will be, in summary, (1) 5 per cent of voting rights; or (2) 5 per cent of the capital contribution.³⁴ The standards for receiving authorisation are such person or entity (1) having sufficient social credibility;³⁵ (2) having not committed a crime; and (3) having no connection with antisocial forces.³⁶

iv Policies and agreements of significance under the Act

Since the purpose of developing the IR and legalising casino business is to promote domestic and foreign tourists to visit and stay in order to enhance vitality and seek sustainable development of the Japanese economy in response to falling population,³⁷ there are policies that need to be followed as well as plans and agreements that are subject to certifications.

Fundamental policies

On 18 December 2020, the Japanese government issued the Fundamental Policies, which are the overarching policies of the national government with respect to the development of IR, which the Minister of Land, Infrastructure, Transport and Tourism has set out.³⁸ The Fundamental Policies set out, among other things, the following matters:

- a* matters concerning the significance and objectives of the development of IR areas;
- b* basic matters concerning measures to promote the development of IR areas;
- c* basic matters concerning the establishment and operation/facilities offering businesses and their operators;
- d* basic matters concerning area development plan certification;
- e* basic matters concerning measures to realise attractive stay-type tourism in Japan that is highly competitive in the international market by means of promoting the development of IR areas through the use of profits from casino business as well as the creativity of regions and the vitality of the private sector; and
- f* basic matters concerning measures necessary to properly eliminate adverse effects that may arise in connection with the establishment and operation of casino facilities.

In this context, the Fundamental Policies have set the timing for the local governments to submit the proposal for the IR certification to be from October 2021 until April 2022.

33 Articles 58 to 60 of the Act.

34 Article 2(12) of the Act.

35 Article 60(1) of the Act.

36 Article 60(2) of the Act.

37 Article 1 of the Act.

38 Article 5 of the Act.

Implementation policies

These would be policies that each local government (i.e., prefectures and certain designated cities) that intends to develop an IR area shall set out in line with the fundamental policies.³⁹ Private entities that intend to perform the establishment and operation/facilities offering businesses may also propose formulation of the implementation policies to the prefecture and designated city⁴⁰. The implementation policies are required to set out the following matters:

- a* matters concerning the significance and objectives of the development of the relevant IR area;
- b* basic matters concerning the location and scale of the area in which the relevant IR area is to be developed;
- c* matters concerning the type, functions and scale of facilities to constitute the relevant IR area, and matters concerning the establishment and operation/facilities offering businesses;
- d* matters concerning invitation and selection of a private entity to perform the establishment and operation/facilities offering businesses;
- e* matters to ensure that the establishment and operation/facilities offering businesses are performed smoothly and certainly;
- f* matters concerning measures to realise attractive stay-type tourism in Japan that is highly competitive in the international market by means of promoting the development of the relevant IR area through the use of profits from casino business as well as the creativity of regions and the vitality of the private sector; and
- g* matters concerning measures necessary to properly eliminate adverse effects that may arise in connection with the establishment and operation of casino facilities.

Area development plan

This would be the plan that the private entity intending to perform the establishment and operation or facilities offering businesses and the prefecture and designated city will jointly prepare for the development of an IR area in line with the fundamental policies and the implementation policies, which shall have a resolution passed by its relative assembly and thereafter be certified by the Minister of Land, Infrastructure, Transport and Tourism.⁴¹ The development plan is required to set out the following matters:

- a* matters concerning the significance and objectives of the area development plan;
- b* matters concerning the location and scale of the area in which the IR area is to be developed;
- c* the name, the address and the representative's name of the establishment and operation or facilities offering businesses operator;
- d* a plan relating to matters concerning the type, functions and scale of facilities to constitute the IR area, matters concerning the establishment and operation or facilities offering businesses and the establishment and operation or facilities offering businesses operator, and other matters that constitute the basis of the establishment and operation or facilities offering businesses;
- e* matters concerning measures to promote the development of the IR area;

39 Article 6 of the Act.

40 Article 7 of the Act.

41 Article 9 of the Act.

- f* matters concerning measures to realise attractive stay-type tourism in Japan that is highly competitive in the international market by means of promoting the development of the IR area through the use of profits from casino business as well as the creativity of regions and the vitality of the private sector;
- g* matters concerning measures necessary to properly eliminate adverse effects that may arise in connection with the establishment and operation of casino facilities;
- h* matters concerning the economic and social impact expected from the implementation of the area development plan;
- i* matters concerning the usage of the amount collectible from certified prefecture and designated city and designated city entrance fees; and
- j* matters concerning the usage of the levy payable to certified prefecture and designated city.

The effective term of the area development plan certification is 10 years,⁴² which may be renewed for successive periods of five years.⁴³ In the case of a renewal, however, the same steps as those required in the application for certification such as the requirement to have a resolution passed by the relative assembly⁴⁴ and obtain consent from the city, town, village and special district in which the IR facilities are located,⁴⁵ which may pose a major risk for the operators to continue business, which is commonly referred to among the operators as the 'Article 10 Issue'.

That is, under the current structure of the Act, theoretically, the assembly of the prefecture or designated city will have the power, at the time of each renewal, to block the operation of IR by not passing the resolution to renew the area development plan, which would be a major risk considering the scale of investment anticipated to be made for the IR by the operators and the years necessary to recoup such amount of investment.

Implementation agreement

After the area development plan is certified, the prefecture or designated city and the establishment and operation or facilities offering businesses operator shall enter into an implementation agreement that sets out the following matters that shall be authorised by the Minister of Land, Infrastructure, Transport and Tourism:

- a* matters concerning the specific system and methods to implement the certified establishment and operation or facilities offering businesses;
- b* matters concerning measures to be taken when it becomes difficult for the operator to continue the establishment and operation or facilities offering businesses;
- c* matters concerning measures to promote the development of IR areas as well as other measures to realise attractive stay-type tourism in Japan that is highly competitive in the international market;
- d* matters concerning measures necessary to properly eliminate adverse effects that may arise in connection with the establishment and operation of casino facilities;
- e* matters concerning measures to be taken in the case of a breach of the implementation agreement;

42 Article 10(1) of the Act.

43 Article 10(6) of the Act.

44 Article 9(8) of the Act.

45 Article 9(9) and Article 10(4) of the Act.

- f* the effective term of the implementation agreement; and
- g* matters prescribed by order of the Ministry of Land, Infrastructure, Transport and Tourism as matters necessary for properly implementing certified area development plans.⁴⁶

Authorisation of commercial contract

Contracts such as those listed below require authorisation from the Casino Administration Committee when a casino business operator intends to conclude them:

- a* contract pertaining to casino services or a contract pertaining to related services in a casino gambling area;
- b* contract pertaining to the commission of services performed by a casino business operator (excluding those set forth in the preceding item);
- c* contract pertaining to the financing in relation to the services performed by a casino business operator (excluding those set forth in item (a));
- d* contract pertaining to the lease of facilities performed by a casino business operator (excluding those set forth in item (a)); and
- e* in addition to those set forth in the preceding items, contract which its term or amount to be paid thereunder exceeds the term or amount specified in the Casino Administration Committee's rules.⁴⁷

⁴⁶ Article 13 of the Act.

⁴⁷ Article 95 of the Act.

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