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# The Legal 500 Country Comparative Guides

## Japan **GAMBLING LAW**

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This country-specific Q&A provides an overview of gambling law laws and regulations applicable in Japan.

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# JAPAN

## GAMBLING LAW



### 1. What is the legal definition of gambling?

The legal definition of gambling 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.

### 2. What legislation applies to gambling? Please provide a summary of the legal/regulatory framework.

Article 185 of the Japanese Penal Code (Act No. 45 of April 24, 1907) provides that a person who gambles shall be punished by a fine or a petty fine of not more than JPY 500,000, unless the item which is placed on bet is that of momentary amusement.

Pursuant to this proviso under the Penal Code, it is understood that the operation of gambling facilities within the geographical area of Japan, regardless of its form, is generally prohibited, unless it qualifies for the two exclusions to this general rule, that is (i) in case such gambling is permitted under the special laws and the operator is permitted to engage in the subject activities or (ii) in case the item placed on bet is “something provided for momentary amusement”.

Accordingly, the legislation applicable to gambling differs depending on the form of gambling, and below are the special laws currently in place applicable to the type of gambling that are legalized under the special laws:

Form of Gambling: Legislation Applicable Horse Racing: Horse Racing Act (Act No. 158 of 1948) Bicycle Racing: Bicycle Racing Act (Act No. 209 of 1948) Auto Racing: Auto Racing Act (Act No. 208 of 1950) Motorboat Racing: Motorboat Racing Act (Act No. 242 of 1951) Sports Betting: Act on Carrying Out, etc. Sports Promotion Vote (Act No. 63 of 1998) Land Based Casino: Act on Development of Specified Integrated Resort Districts (Act No. 80 of July 27, 2018)

### 3. Which body/ies regulate gambling?

As you will see from the answers to question 2 above, the regulations would differ according to the provisions under the special laws legalizing such form of gambling, and accordingly, the regulatory bodies are also different. Below is an example describing the ultimate regulatory body for the form of gambling that are legalized under the special laws (please note that certain aspects of the regulation is delegated to other bodies depending on each special laws):

Form of Gambling: Overseeing Regulatory Body  
 Horse Racing: Ministry of Agriculture, Forestry and Fisheries  
 Bicycle Racing: Ministry of Economy, Trade and Industry  
 Auto Racing: Ministry of Economy, Trade and Industry  
 Motorboat Racing: Ministry of Land, Infrastructure, Transport and Tourism  
 Sports Betting: Ministry of Education, Culture, Sports, Science and Technology  
 Land-Based Casino: Ministry of Land, Infrastructure, Transport and Tourism

### 4. Are licences available? If so: a) What is the duration of a licence? b) What types of licences are available? c) Are there different types of licences for B2C and B2B operators? d) Do software suppliers need to be licensed?

As you will see from the segmented framework of the gambling regulation under the current Japanese legislation described above, there is no uniformed “licenses” available. Rather, each of the special law has its own parameters/requirements as to who can do what type of activity, although there are various terms used for such purpose (e.g. certification, license, permit, approval, selection) which is too detailed to explain for the purpose of this writing.

As an example, below is the snapshot of the “licensing” requirements under the legislation specific to the land-based casino (please be reminded that this is a requirement only specific for the “land-based casino”

and all other forms of gambling would have a completely different requirement):

The duration of the “license” varies depending on the status of the applicant and the nature of the “license”, which is outlined in the answers in Item b below.

In order to operate a land-based casino, an operator must first be “selected” by the local municipality through a bidding process as an entrepreneur to operate a casino within such jurisdiction, which its duration is dependent upon the decision of the local municipality. Subsequently, such operator must obtain “certification” by the Minister of Land, Infrastructure, Transport and Tourism which its initial term is 10 years and thereafter 5 years in case it is renewed. The operator “certified” by the above process may apply for a separate form of “license” for the operation of the casino from the Casino Regulatory Commission which its term is 3 years.

Another separate form of “license” from the Casino Regulatory Commission is required for those entities that (i) lease the underlying land of the casino facilities and (ii) also for those entities that lease the buildings and infrastructures of the casino facilities to the casino operator, which those terms are 3 years also. Those entities that manufacture, sell or lease casino-related devices must obtain a “permit” from the Casino Regulatory Commission, which its term is 3 years.

As you will see from the answers to Item b above, different types of licences are required for different types of operations, not only from the B2C and B2B perspective.

Certain type of software suppliers must obtain a “permit” from the Casino Regulatory Commission.

### **5. Are any types of gambling products prohibited?**

Due to the general restriction of gambling, all the types of gambling products are prohibited unless the product qualifies for the two carve outs described in the answers to question 2 above.

### **6. What is the headline application procedure? Please include any eligibility and other application requirements, including approximate application costs and any need to establish a local presence.**

The application procedures differ according to the laws/regulators that govern each form of gambling, and therefore it is difficult to generalize the application

procedure in this writing. Please inquire the author for the specific procedure by defining what form of gambling/service you are contemplating to provide in Japan.

### **7. Do individuals within the business need to be personally licensed or authorised? If so, please provide headline requirements.**

The requirement for the individuals within the business to be personally licensed or authorised differ according to the laws/regulators that govern each form of gambling, and therefore it is difficult to generalize the application procedure in this writing. Please inquire the author for the specific requirements by defining what form of gambling/service you are contemplating to provide in Japan.

### **8. Is advertising of gambling permitted and, if permitted, how is it regulated?**

The permission and regulation regarding the advertising of gambling would depend on the special laws for each form of gambling. Having said that, in 2018, the Basic Act on Countermeasures for Gambling Addiction was enacted for the purpose of establishing an overarching framework for countermeasures against gambling addiction. The said law consists of only 36 articles, but Article 13 provides that the national and local governments shall take the necessary measures to ensure that the prevention against Gambling Addiction are implemented while respecting the voluntary efforts of the business operators with regard to advertising and promotion, management of admission and other methods of implementation of business conducted by the relevant business operators. Subsequently, the business operators within the industry is preparing for the publication of advertising guidelines and implementation of public awareness activities.

### **9. Are marketing affiliates permitted? If so, are they licensed or regulated?**

There are no general ban concerning marketing affiliates and therefore are permitted, as long as the service provided by the affiliates conform with the overarching regulations, including but not limited to the consumer protection laws such as the Act against Unjustifiable Premiums and Misleading Representations, Consumer Contract Act, or the Act on Specified Commercial Transaction.

## 10. What are the penalties for offering, facilitating or marketing unlawful gambling, and can the gambler be penalised for participating in unlawful gambling?

As outlined in the answers to question 2, engaging in unlawful gambling is punishable by fine or a petty fine of not more than JPY 500,000. If the offence is committed repeatedly and qualifies as habitual gambling, the penalty would be imprisonment of not more than 3 years.

Further, person who runs a gambling house or assembles gambles for gain shall be punished by a prison term of between 3 months and 5 years.”

In addition to the foregoing, aiding and abetting principal crime is subject to punishment for aiding and abetting, which could be subject to penalty for the same or less strict punishment compared to that of the principle offender.

## 11. Briefly detail key requirements for licensees.

Please see the answers to Question 4 above.

## 12. Briefly detail key anti-money laundering requirements.

The key anti-money laundering requirements in the context of gambling are mostly included in the Act on Punishment of Organised Crimes and Control of Crime Proceeds (Act No. 136 of 1999) and the Act on Prevention of Transfer of Criminal Proceeds (Act No. 22 of 2007), which impose requirements to the specified operators that commonly appears in many other jurisdictions, such as due diligence requirements, confirmation requirements, reporting requirements, and record-keeping requirements.

## 13. Briefly detail key responsible gambling (or safer gambling) requirements.

The focus by the Japanese government with respect to responsible or safer gambling has been relatively low compared to other jurisdictions, mainly due to the fact that gambling in general has been prohibited with limited carve outs and the legalized form of gambling was run by public entities. However, due to the passing of the law which allow gambling operations by private entities, there has been growing concern by the general

public with respect to responsible gambling (or the lack thereof).

The lawmakers felt the necessity to establish the responsibilities of the national government, local government and other relevant parties with regard to gambling addiction countermeasures, stipulate the fundamental principles and matters regarding the gambling addiction countermeasures, and to thereby promote the gambling addiction countermeasures in a comprehensive and systematic manner. In response to such situation, in 2018, the Basic Act on Countermeasures for Gambling Addiction (the “Act”) was enacted during the Japanese Diet session which provides the framework for the countermeasures for gambling addiction (only consisting of only 36 articles). Below is a summary of the key points of the Act.

The Act encompasses not only straightforward gambling but also “pachinko”.

Article 2 of the Act provides that the term “Gambling Addiction” means an addiction involving the placing of bets on public races, participation in pachinko, and other acts which carry the risk of arousing a passion for gambling for the acquisition or loss of economic benefits that are carried out in accordance with law. Thus, the act clearly encompasses “pachinko” as an activity which is subject to the Act despite the fact that it has long been classified as non-gambling entertainment.

The Act places responsibility on more parties than just the government and gambling-related business operators.

The Act puts the responsibility to address Gambling Addiction on various parties concerned from the national government to general citizens where:

- the national government shall be responsible in formulating and implementing the Gambling Addiction Countermeasures (Article 5),
- the local government shall be responsible to adjust such measures to be suited to the circumstance of that local area (Article 6),
- the business operator engaging in gambling-related business shall be responsible in giving the utmost consideration to the prevention of Gambling Addiction (Article 7),
- the citizens shall be responsible for endeavouring to deepen their interest in and understanding of the Gambling Addiction problem (Article 8),
- the doctors shall be responsible for endeavouring to provide quality and appropriate medical care pertaining to

- Gambling Addiction (Article 9), and those who engage in businesses related to the Gambling Addiction Countermeasures shall be responsible for endeavouring to cooperate with the Gambling Addiction Countermeasures implemented by the national and local governments (Article 10).

#### Basic Measures provided under the Act

The Act intends to take a comprehensive approach to countering gambling addiction consisting of the following nine pillars:

1. Promotion of Education (Article 16) The Act requires the national and local governments to take the necessary measures to promote education on and learning about the Gambling Addiction problem in homes, schools, workplaces, communities and various other places.
2. Requirement for the Gambling-Related Business Operators to conduct business by giving due consideration (Article 17) The Act requires the national and local governments to take the necessary measures to ensure that the business method of Gambling-Related Business Operators is considerate of the Prevention and Other Measures against Occurrence of Gambling Addiction, with an emphasis on restriction on Gambling Addicts' use of the operator's facility.
3. Maintenance for Medical Care System (Article 18) The Act requires the national and local governments to take the necessary measures to (1) promote research on and development of the methods of prevention, diagnosis and treatment of Gambling Addiction and disseminate the results, (2) provide for the maintenance of medical institutions that provide specialized medical care, (3) secure mutual coordination between medical institutions and other parties, and (4) maintain other systems that provide quality and appropriate medical care.
4. Counselling and Support (Article 19) The Act requires the national and local governments to take the necessary measures to enhance the counselling and support system for Gambling Addiction at mental health and welfare centres by providing legal advice and otherwise enhancing the counselling and support services available for Gambling Addicts and their families.
5. Support for Social Rehabilitation (Article 20) The Act requires the national and local

governments to take the necessary measures to promote support for employment of Gambling Addicts and other forms of support by giving particular consideration to the social rehabilitation of Gambling Addicts who committed crimes in relation to their Gambling Addiction.

6. Reduction of Financial Burden (Article 21) The Act requires the national and local governments to reduce the financial burden of Gambling Addicts and their families who receive support from private organizations.
7. Support and Coordination with Private Organizations (Article 22) The Act requires the national and local governments to take the necessary measures to support activities where the Gambling Addicts support one another to prevent the occurrence, progression and relapse of Gambling Addiction and to recover therefrom plus other voluntary activities related to Gambling Addiction that are conducted by private organizations, and to ensure coordination between the private organizations.
8. Recruitment, Training and Quality Improvement of the Personnel (Article 23) The Act requires the national and local governments to take the necessary measures to recruit, train and improve the quality of personnel with sufficient knowledge of the Gambling Addiction problem.
9. Promotion of Investigative Research (Article 24) The Act requires the national and local governments to take the necessary measures promote fact-finding surveys and other investigative research related to the Gambling Addiction problem, including the relationship between Gambling Addiction and other problems such as multiple financial debts, poverty, domestic abuse, suicide and various crimes.

#### 14. Briefly detail shareholder reporting and approval threshold(s).

The shareholder reporting and approval threshold(s) differ according to the laws/regulators that govern each form of gambling/service to be provided, and therefore it is difficult to generalize the application procedure in this writing. Please inquire the author for the specific thresholds by defining what form of gambling/service you are contemplating to provide in Japan.

### 15. Briefly detail the regulator's enforcement powers, including sanctions.

The regulator's enforcement powers differ according to the laws/regulators that govern each form of gambling/service to be provided, and therefore it is difficult to generalize the enforcement powers for each regulator in this writing. Please inquire the author for the specific regulator's enforcement powers by defining what form of gambling/service you are contemplating to provide in Japan.

### 16. What is the tax rate?

The tax rate differ according to the laws/regulators that govern each form of gambling/service to be provided, and therefore it is difficult to generalize the tax rate in this writing. Please inquire the author for the specific tax rate by defining what form of gambling/service/activity you are contemplating to provide in Japan.

### 17. Are there any proposals for changing gambling laws and regulations in the next 12-24 months? If so, please provide an overview of the proposed changes and likely timing.

There is no official proposal that has been made public to change gambling laws and regulations in the next 12-24 months. Having said that, there has been reports that the Ministry of Economy, Trade and Industry has been considering legalization of sports betting due to its proliferation taking place globally and especially in the United States since the strike down of PASPA.

### 18. What key regulatory developments are proposed or on the horizon in the next 12-24 months?

Please see the answers to Question 17 above.

### 19. Do you foresee any imminent risks to the growth of the gambling market in your jurisdiction?

There has been a strong focus on the online gaming sector due to an incident that occurred in May 2022, where a person who was mistakenly appropriated millions of Japanese yen as COVID relief fund claimed that he already lost the money through online gambling.

This incident developed into a political issue, where the opposition party accused the Prime Minister that not enough enforcement actions has been taken against illegal online casinos which should be illegal -, and in response, the Japanese Prime Minister Fumio Kishida declared during a session for House of Representatives Budget Committee that "(online casinos) are illegal, and ministries and agencies must work together to clamp down on them strictly",,, posing a potential risk to the growth of the gambling market.

### 20. If a gambling start-up was looking for a jurisdiction in which to commence its activities, why would it choose yours?

Japan is the third largest economy in the world only behind the United States and China, which alone would be a reason for a gambling start-up to consider commencing its activities. In addition, due to the general prohibition of gambling under the Penal Code, the gambling market could be described as been relatively untouched compared to other jurisdictions. Coupled with the fact that the Japanese government and lawmakers are looking for the further expansion of the market as evidenced by the recent developments such as the legalization of land-based casino and expansion of sports betting, there may be opportunities for the operators that are not available in other jurisdictions.

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