

Gaming Law

Jurisdictional comparisons

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1. OBJECTIVES AND STRUCTURE OF LEGISLATION

The general prohibition against gambling was included in the Criminal Code upon its enactment on 18 September 1953. The purpose was to preserve good public morals and prevent the furtherance of speculative spirits, which has been interpreted to include incitement of excessive seeking of profits based on games of chance to societal detriment, by legally controlling gambling with certain permissible exceptions. The law has evolved to include certain exceptions for permissible activities, which are addressed in greater detail in section 2.1 below. However, please note that the general prohibition against gambling still exists in Korea, and the trend of the law has been to subject those who are in violation of the laws to strict sanctions, which are further addressed below.

2. FRAMEWORK OF LEGISLATION

2.1 What is the legal definition of gambling and what falls within this definition?

While gambling is prohibited by the Criminal Code, it provides for a limited number of exceptions pursuant to separate laws which regulate specific types of permissible betting activities. Although gambling itself is not specifically defined under the Criminal Code, gambling has been interpreted by the Korean courts to mean any act of determining monetary gain or loss by wagering property on chance or luck. This has been broadly construed by the courts. According to the Korean Criminal Code, Article 246 (Gambling, Habitual Gambling), a person who gambles or wagers for the purpose of gaining property shall be punished by a fine of up to Korean Won 5 million. Some examples of illegal gambling include betting or wagering on card games such as poker, mah-jong, go-stop, billiards, slot machines, dice games, etc, unless such activities are provided by a licensed and approved gaming (casino) business operator.

However, certain betting activities are permissible to the extent that they are specifically provided for and permitted by other laws. For example, a gaming business is permissible under the Tourism Promotion Act and subject to strict regulation requiring approval and licensing by the Ministry of Culture, Sports and Tourism. A gaming business is defined as the business of operating an exclusive business facility in which players make a profit while other players sustain a loss as a consequence of probabilities, playing with specific implements such as dice, cards and slot machines.

Further, the following activities are permissible as long as they are

operated in accordance with their respective laws: lotteries and other specified speculative activities, such as prize contests and sweepstakes (regulated by the Act on Special Cases concerning Regulation of Speculative Acts); betting on horse racing (regulated by the Korean Racing Association Act); bicycle racing and motorboat racing (both regulated by the Bicycle and Motorboat Racing Act); traditional bullfighting (regulated by the Traditional Bullfighting Act); and other specified sports betting operated by the Korea Sports Promotion Foundation and its trusted operators (regulated by the National Sports Promotion Act). However, any betting activity which is outside of the scope of these regulated and permitted activities is subject to the prohibition against gambling as set forth in the Criminal Code.

2.2 What is the legal definition of online gambling and what falls within this definition?

There is no distinction between online gambling and land-based gambling under the laws of Korea. As such, any activity which falls within the scope of gambling under the Korean courts' interpretation of the Criminal Code will be likewise prohibited if such activity occurs online. Therefore, any online activity which determines monetary gain or loss by wagering property on chance or luck is prohibited, including online card games, slot machines, dice games, etc. In addition, although land-based gaming businesses are permitted to a certain extent, there is no licensed online gaming business in Korea.

Furthermore, online games, including card games, slot machines and other games which incorporate betting elements, are subject to rating requirements. Pursuant to the Game Industry Promotion Act (Game Act), all games, including online games, must be rated prior to release in Korea by the Games Ratings Board (GRB), with certain exceptions for games which are developed and distributed for non-commercial purposes (eg, education, religious or public interest activities). The GRB's rating categories are as follows: (i) all ages; (ii) age 12 and older; (iii) age 15 and older; and (iv) not suitable for minors (age 18 and older). Additionally, the GRB may issue a 'no-rating' designation when it deems that the game at issue violates Korean law, in which case the distribution of such game is prohibited in Korea. Games which are deemed to be 'speculative games' are subject to a 'no-rating' designation in Korea, and distribution of such speculative games is prohibited.

In this respect, speculative games include any game which provides financial gain or causes financial loss depending on the outcome and contains any of the following: (i) a game that involves wagering or payouts; (ii) a game of which the outcome depends on a method of chance; (iii) a game which imitates land-based gaming businesses, horse-racing, bicycle racing and/or motorboat racing defined under the relevant laws; or (iv) all other games as determined by the Presidential Decree (which is a lower regulation under a specific law) to the Game Act. The Presidential Decree to the Game Act has included games which imitate Korean traditional bullfighting, lotteries and all other speculative activities defined under the

relevant Korean laws.

Therefore, any game which contains betting for cash or financial gain or loss ('cash betting') will likely be deemed to be a speculative game and will likely receive a 'no rating' designation, in which case release in Korea is not permitted. However, even if cash betting is not involved, such game may not be deemed to be a speculative game, but may rather receive an age-restrictive rating.

2.3 Please set out the different gambling products identified by legislation.

Gambling is primarily regulated and generally prohibited under the Criminal Code, unless specifically exempted and regulated by other specific laws. The Criminal Code further prohibits the operation of a gambling place other than as set forth in the other laws, such as the Tourism Promotion Act, which regulates gaming business operators. As such, the categories mentioned above – poker and betting (other than permitted sports betting), casino games and slot and other machine gaming – are prohibited by the Criminal Code as illegal gambling, unless operated by a licensed gaming business operator.

Sports betting is permitted to the extent that it is heavily regulated by the National Sports Promotion Act and exclusively operated by the Korea Sports Promotion Foundation and its entrusted operators. Bingo, sweepstakes and prize contests, etc, may fall under the scope of 'speculative activities' which are regulated by the Act on Special Cases concerning Regulation of Speculative Acts and permitted with the approval of the relevant local authorities. The national lottery is regulated by the Lottery Tickets and Lottery Fund Act, and lottery tickets may only be issued by the Korean Lottery Commission and other authorised entities. In addition, betting on horse racing, bicycle racing, motorboat racing and traditional bullfighting are permitted and regulated under their respective laws, as addressed in section 2.1 above.

2.4 Please list the different requirements for each gambling product, including legal classifications for each; for example, is poker a game of skill or game of chance?

The laws of Korea do not distinguish between so-called games of skill and games of chance. In other words, both games of skill and games of chance may be deemed to be illegal gambling. Therefore, regardless of whether a game contains skill elements, such game may still be deemed to be illegal gambling in accordance with the courts' interpretation of the Criminal Code.

For example, the Korean Supreme Court held that betting on golf (Supreme Court case rendered on 23 October 2008, 2006Do736), in which the players settled in cash depending on their scores, was deemed to be within the scope of gambling. The Supreme Court reasoned that although a player's skill would affect his/her score, the chance or luck element of gambling was satisfied since the outcome could not be predicted by the parties.

2.5 Explain the system of regulation of gambling; which regulatory or governmental body is responsible for supervision of gambling? Which body issues licences?

Permissible gambling and speculative activities are regulated pursuant to the specific laws mentioned in section 2.1.

With respect to gaming businesses, approval and licensing is required from the Ministry of Culture, Sports and Tourism pursuant to the Tourism Promotion Act. Meanwhile, the Jeju Self-Governing Province is subject to the ‘Special Act on the Establishment of Jeju Special Self-Governing Province and the Development of Free International City.’ Pursuant to this law, the Governor of the Jeju Self-governing Province has independent authority to approve and license gaming businesses in the territory of the Jeju Self-Governing Province, separate from the Ministry of Culture, Sports and Tourism and Tourism Promotion Act.

Other permissible gambling activities and their respective regulatory schemes are described in section 4.1 below.

3. ONLINE GAMBLING

3.1 To what extent can online gambling be offered in your jurisdiction? Are licences available and if so, for which gambling products. Please describe briefly the licensing process, who may apply, whether licences are limited in number, and, if no licences are available, whether it is legal for online gambling to be offered.

Online gambling activities which involve cash payouts are prohibited as Korean law does not distinguish between online gambling and land-based gambling. Further, online games which imitate or mimic gambling activities are subject to the ratings requirement from the GRB prior to release in Korea. As discussed in section 2.2, online gambling which contains betting for financial gain or loss will be deemed to be a speculative game and subject to a ‘no-rating’ designation by the GRB, in which case distribution of such game in Korea is prohibited. If such cash betting is not involved, then it is possible that the game may receive an age-restrictive rating. There is no separate licensing regime for online gambling.

3.2 Is there a distinction between the law applicable between B2B operations and B2C operations?

There is no distinction between B2B and B2C operators, and all online gambling activities involving betting for financial gain or loss would be viewed as speculative games subject to the no-rating designation.

3.3 What are the consequences for B2C or B2B operators who are active in your jurisdiction without having obtained or applied for the required permits, licences and approvals?

While the criminal penalties depend on the type of gambling activity at issue, generally sanctions for providing facilities for gambling activities may include imprisonment for up to three years or fine of up to Korean Won 20 million.

3.4 Has the legal status of online gambling changed significantly in recent years, and if so how?

No, online gambling has generally been prohibited in Korea since the inception of online gambling on the internet within the scope of prohibited gambling under the Criminal Code.

3.5 Whilst acknowledging the inherent difficulty in predicting developments in gambling law, what are the likely developments in online gambling in your jurisdiction, both short term and long term? Are any specific amendments under consideration? Have there been any recent political developments, or do you envisage any in the near future? Are any specific amendments under consideration? Are they likely to be adopted and what is the time scale?

It is difficult to forecast the potential or future development of the laws and regulations relating to gambling, online gaming and gaming businesses in our jurisdiction. Any such developments would generally reflect various considerations such as public perception, trends and demand in the tourism industry, political discussion, global and local economic circumstances and the necessity to promote foreign investment, among others. Although there have been discussions on whether to ease or maintain certain restrictions (or in some cases strengthen said restrictions) in the relevant laws and regulations, resulting in minor amendments to the relevant laws, it is difficult to predict at this stage any future developments to those laws and regulations.

3.6 Is the law the same in relation to mobile gambling and interactive gambling on television? If not, are there any headline differences?

While interactive gambling on television does not have a significant presence in Korea as of April 2012, generally, online gambling, mobile gambling and interactive gambling are all subject to the same prohibitions as illegal gambling under the Criminal Code.

4. LAND-BASED GAMING

4.1 Please describe the licensing regime (if any) for land based gaming, and what products are included. Please set out what licences are available, and the licensing regime for them.

Land-based gaming is regulated by the specific laws depending on the type of activity at issue.

For gaming businesses, the Ministry of Culture, Sports and Tourism has the authority to grant gaming (casino) business licences to gaming business operators pursuant to the Tourism Promotion Act. The licences are granted on a national level, although the licence is limited to the facilities which are registered under the licence. Any person who intends to operate a gaming business shall have certain facilities and machines, including an exclusive business facility, and submit a licence application form to the Ministry of Culture, Sports and Tourism. The Ministry of Culture, Sports and Tourism may, upon receiving an application for a gaming business licence, grant it only when the applicant intends to run a gaming business in the facilities

of a hotel business operated in a Special Metropolitan City, a Metropolitan City, a Province or a Special Self Governing Province having an international airport or an international passenger ship terminal or in a special zone, or in a subsidiary facility to the facility of international conference business. In addition, a gaming business must possess certain facilities and equipment in compliance with the rules of the Ministry of Culture, Sports and Tourism (eg, machines that comply with the minimum payout ratio and retention of game records). Under the Tourism Promotion Act and its Decree, the Minister of Culture and Tourism may grant a new licence when the total number of foreign tourists who have entered into the territory of Korea has increased by 600,000 persons or more since the previous licence was granted, and such licence may be granted to the extent of no more than two licences per each increase of 600,000 foreign tourists. The Ministry may also take into account: (i) the increasing trend in the number of foreign tourists; (ii) the increasing trend in the number of gaming business visitors; (iii) the total capacity of the existing gaming business operators; (iv) the total results of foreign exchange earnings by existing gaming business operators; and (v) any other matters necessary for the sound development of a gaming business. Even if the above requirements are met, the Ministry may nevertheless restrict permission as it deems necessary for the maintenance of public peace and order or for the sound development of the gaming industry.

For lotteries, the Commissioner of the Metropolitan Police Agency or the Chief of the National Police Agency may grant a licence, or the Lottery Commission may consign certain functions related to the lottery, including issuance of tickets, to an organisation or a private individual, and a consignee may re-consign the lottery related functions to another organisation or private individual after the Lottery Commission approves, pursuant to the Act on Special Cases concerning the Regulation of Speculative Acts.

With respect to other speculative businesses, such as sweepstakes and prize contests, the Commissioner of the Metropolitan Police Agency or the Chief of the National Police Agency has the authority to grant a licence for such activities pursuant to the Act on Special Cases concerning the Regulation of Speculative Acts.

Other speculative activities are permitted and regulated by the local authorities (eg, police) in the province or district in which such activities shall occur. The following businesses may be permitted upon obtaining permission: (i) lottery ticket issuance business in which money is collected from purchasers by issuing tickets, after which the winners are given financial gain while the remaining participants suffer losses; (ii) prize competition business where money is collected from persons who participate in suggesting or selecting an answer with regard to a particular question, after which all or some winners are given financial gain while the remaining participants suffer losses; (iii) other speculative businesses determined by Presidential Decree which utilise for-profit implements or methods such as wheel-spinning, drawing lots, awarding prizes, etc, which might stir up speculative spirits.

With respect to sports betting, the National Sports Promotion Act permits certain types of sports betting, although it does not specify the types of sports for which betting may be permissible. Rather, the business plan of the relevant operator must be submitted along with the licence application package to the Ministry of Culture, Sports and Tourism and the types of sports subject to betting may be decided through the Ministry's approval procedures. Currently, betting on domestic and overseas football (soccer), basketball, baseball, volleyball, golf and Korean sumo wrestling are operated by the Korea Sports Foundation and Sports Toto, Co Ltd, which is its entrusted operator.

Traditional bullfighting is regulated by the Ministry for Food, Agriculture, Forestry and Fisheries, pursuant to the Traditional Bullfighting Act. Traditional bullfighting may be held by any local government that obtains a permit from the Ministry for Food, Agriculture, Forestry and Fisheries. However, a local government may entrust part of the business affairs related to traditional bullfighting, such as sales of betting slips, the operation and management of a bullfighting arena, and public relations activities, to an organisation or a private individual approved by the Ministry for Food, Agriculture, Forestry and Fisheries.

Horse racing is operated exclusively by the Korean Racing Authority, a non-profit organisation established pursuant to the Korean Racing Association Act. It is the sole horse racing authority in Korea and operates under the Ministry for Food, Agriculture, Forestry and Fisheries. Pursuant to the Korean Racing Association Act and its lower regulations, the Ministry for Food, Agriculture, Forestry and Fisheries may grant a licence to the Korean Racing Association to install horse racetracks only where there are appropriate facilities (circular or oblong horse racing track which is no more than 1,000 meters in length, more than 16 meters wide, with a referee spot, betting ticket agency, etc).

Bicycle racing and motorboat racing are operated exclusively by local government or the Korea Sports Promotion Foundation licensed by the Ministry of Culture, Sports and Tourism pursuant to the Bicycle and Motorboat Racing Act. The Ministry of Culture, Sports and Tourism may grant a licence for a local government or Korea Sports Promotion Foundation to install bicycle racetracks only where there are appropriate facilities (circular or oblong bicycle racing road which is more than 300 meters in length, more than seven meters wide, with a referee spot, betting ticket agency, etc) and motorboat facilities only where there are appropriate facilities (path which is more than 450 meters in length, more than 70 meters wide, with a referee spot, betting ticket agency, etc).

4.2 Please set out any particular limitations or requirements for (eg casino) operators, such as a ban on local residents gambling.

Currently, under the Tourism Promotion Act, gaming businesses (ie, casino operators) licensed under the same act are not allowed to permit the entrance of local residents into the gaming facilities. Thus, land-based gaming is limited for local residents to one licensed gaming business

facility in Korea, ie, Gangwonland, for which the requirement to restrict the entrance of local residents under the Tourism Promotion Act is relaxed pursuant to the Special Act on Support of Development of Abandoned Mine Area in order to support the development of a disused mine area.

Also, the minimum age for participation in legitimate, licensed betting activities is 19 years of age.

Otherwise, sports betting is only permissible for certain sports. While the National Sports Promotion Act does not specify the types of sports, currently betting on domestic and overseas football (soccer), basketball, baseball, volleyball, golf and Korean sumo wrestling are in operation. The betting activities must be conducted at certain facilities which are operated by the Korea Sports Foundation and/or Sports Toto Co Ltd, its entrusted operator.

5. TAX

5.1 Please summarise briefly the tax regime applicable both to land-based and online gaming.

The general corporate income tax regime applies to land-based and online gaming. The relevant corporate income tax rates are 11 per cent for those companies which earn up to Korean Won 200 million per annum, and 22 per cent for those companies which earn over Korean Won 200 million. There are no special regulations on gambling for tax purposes. In addition, revenues from illegal gambling sources may be taxable as regular income as if the revenues were from legitimate sources.

With respect to individual income tax, any proceeds earned from gambling are subject to the individual's income tax rate.

As a separate matter, gaming businesses (ie, casino operators) licensed under the Tourism Promotion Act are obligated to make certain payment to funds (such as tourism promotion funds) for a certain portion of its revenue as prescribed under the relevant laws.

6. ADVERTISING

6.1 To what extent is the advertising of gambling permitted in your jurisdiction?

Advertisement of gambling activities is permissible to the extent that the activity being advertised is a legal activity provided that the method and contents of the advertisement are in accordance with the relevant laws and regulations. On the other hand, if the gambling activities are prohibited by the laws of Korea, then any advertisement of them would be illegal. Therefore, the advertisement of licensed gaming businesses, lotteries, etc, is permissible under the laws of Korea to the extent that such advertisement is released in accordance with the relevant laws and regulations.

Online advertisements are regulated by the Act on Promotion of Information and Communications Network Utilisation and Information Protection Act, etc, which similarly permits advertisement of gambling activities to the extent that the activity being advertised is a legal activity. Furthermore, the Juvenile Protection Act prohibits the placement of certain online advertisements which are deemed to be harmful to minors on

websites which are not equipped to restrict access by minors. It is likely that an advertisement for gambling activities would be deemed to be material harmful to minors and therefore prohibited unless the website in which the advertisement was placed was equipped to restrict access to minors.

However, please note that there are certain restrictions on the advertisement of permissible betting activities. Under the Tourism Promotion Act, the advertisement or public relations activity of a gaming business cannot excessively instigate speculative spirit or undermine good public morals. However, the restrictions against instigating speculative spirits or undermining good public morals are vague and there is no clear guidance or precedent to interpret their provisions.

For other 'speculative' activities (businesses such as lotteries, contests and sweepstakes, among others), the Act on Special Cases concerning Regulation of Speculative Acts similarly prohibits any advertisements or propaganda which might be detrimental to good morals by stirring up excessive speculative spirit.

7. SOCIAL GAMING

7.1 We believe this to be a growing area. Please decide under what criteria social gaming is permitted in your jurisdiction. If games are free to play, or if there is no prize are they legal, without a licence? Please address circumstances where virtual currency is used and can be won: ie, currency which is of no monetary or other value, save for as credits to take part in games.

All games, including social games, are subject to the ratings requirement pursuant to the Game Act administered by the GRB, subject to certain limited exceptions, such as games which are developed and distributed for non-commercial purposes (eg, education, religious or public interest activities).

The GRB's rating categories are as follows: (i) all ages; (ii) age 12 and older; (iii) age 15 and older; and (iv) not suitable for minors (age 18 and older). Additionally, the GRB may issue a 'no-rating' designation when it deems that the game at issue violates Korean law, in which case the distribution of such game is prohibited in Korea.

As an initial matter, any game which contains the exchange of real money or game money which is obtained while playing a betting game is prohibited under Korean law as a speculative game. According to the Game Act, games (including social games) are deemed to be speculative games if a game provides financial gain or causes financial loss depending on the outcome, and is any one of the following: (i) a game that involves wagering or payouts; (ii) a game of which the outcome depends on a method of chance; (iii) a game which imitates land-based gaming businesses, horse-racing, bicycle-racing and/or motorboat-racing defined under the relevant Korean laws; or (iv) all other games as determined by Presidential Decree (a game which imitates bullfighting, lotteries, and speculative activities defined under the relevant Korean laws).

For game products, the GRB reviews gambling-like activities in accordance

with the following guideline examples of speculative games: (i) service fees which are out of the standard norm; (ii) game credits/points which can be redeemed for cash or other property; (iii) game credits/points which can be redeemed for tangible or intangible compensation through direct or indirect trading; (iv) game credits/points which may be used for in-game betting and are transferable between players and purchased directly with cash. If none of the above has been met, then it is possible that such games may not constitute speculative games (which receive a 'no rating' designation) when rated by the GRB. In such case, the games may be rated with an age restriction.

In the case of non-betting games, the exchange of game money is not expressly prohibited under the law. However, the existence of a cash trade system which permits the exchange of game money for real money may have an effect on the GRB's review of a game for the purpose of the age ratings.