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JAPAN'S STRICT GAMBLING LAWS: PENAL CODE, PREMIUM REGULATIONS, AND EMERGING ISSUES IN ESPORTS AND ONLINE GAMES

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MORI HAMADA & MATSUMOTO

1. Overview

In Japan, gambling and the sale of lottery tickets are criminal activities under the Penal Code,¹ and only the licensed forms of public gambling (horse racing, bicycle racing, boat racing and auto racing)² and lotteries may be legally conducted. Also, gambling, including online forms thereof, is widely punishable under the law if it involves the acquisition or loss of economic value by means of chance and probability. It should therefore be noted that, for example, random-type sales (where the value of the goods or services purchased by the purchaser is randomly determined to be higher or lower than the paid amount)

may be considered gambling under the Penal Code.

In addition, the Act against Unjustifiable Premiums and Misleading Representations (the "AUPMR") regulates the provision of certain economic benefits as "premiums" if such benefits are provided incidentally to any transactions for products or services, and the value of these premiums must

not exceed a certain threshold. While these are essentially regulations to protect consumers, they play a similar role to that of gambling-specific regulation.

In this article, we discuss (i) esports and (ii) online games as major venues where criminal gambling activity has increased and where regulations on premiums have recently been tightened in Japan. We also explain the current status of integrated resort ("IR") policy planning, as IRs are currently being considered for introduction in Japan.

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Any contest for the acquisition or loss of economic value by chance and probability, whether online or offline, is widely punishable under the Penal Code as gambling.

In Japan, the crime of gambling is punishable by a fine of up to JPY 500,000 or a petty fine.³ The same does not apply to gambling occasionally for recreation (e.g., if the players wager immediately consumable items, such as food, drinks or cigarettes), but this exemption is rarely applied.

In order to constitute "gambling" as referred to in the crime of gambling, "property" must be wagered and the "acquisition or loss" of that property must "be contested" in conditions involving "chance." Here, "chance" means a state that cannot be predicted or controlled by a party at that party's discretion, and thus it remains subjectively uncertain for the party. "Property" is not necessarily limited to money or any other tangible objects but refers to economic benefits in a broad sense. "Contesting the acquisition or loss" of property means that there is a winner who gains and a loser who loses the property.

Even if not engaging in gambling themselves, any person who, for the purpose of profit, runs a place for gambling or organises a group of habitual gamblers shall be punished by imprisonment for at least three months to five years.⁴ Therefore, it should be noted that the act of providing gambling services for users may also be punishable under the Penal Code.

In Japan, the government has not published any official guidelines regarding gambling. However, industry organisations in various industries have expressed certain thoughts about this topic, as explained in section 3 below, which may be helpful for business operators when considering whether their services are punishable as gambling.

2. Major gambling-related laws and regulations

2.1. Penal Code (Crime of gambling)

1. Articles 185 to 187 of the Penal Code.

2. Pachinko, a popular form of amusement in Japan, is not considered gambling.

3. Article 185 of the Penal Code. A "petty fine" is a fine of at least JPY 1,000 to 10,000 (Article 17 of the Penal Code). Any person who habitually gambles may be punished by imprisonment for up to three years (Article 186(1) of the Penal Code).

4. Article 186(2) of the Penal Code.

2.2. Regulations on premiums

In Japan, when a business operator offers economic benefits to consumers as a means of inducing them to purchase goods or services that the business operator itself supplies, such economic benefits are deemed to be “premiums” that are subject to regulations under the AUPMR. The regulations set the maximum value to prevent the inducement of customers to make purchases based on unjustifiable premiums. Specifically, the AUPMR distinguishes between two methods of offering premiums, each with a different maximum:

(i) General Prizes - When a premium is offered by chance, such as in a raffle, by the superiority of a specific act, or the like (e.g., by participation in a lottery, athletic event or game)

Transaction Value	Limit of Premium	
	Maximum Value	Total Value
Less than JPY 5,000	20 times the transaction value	2% of the total expected sales related to the premium
JPY 5,000 or more	JPY 100,000	

(ii) Premiums Offered to All - When a premium is offered to general consumers without a general prize (e.g., by registering for a service)

Transaction Value	Limit of Premium (Maximum Value)
Less than JPY 1,000	JPY 200
JPY 1,000 or more	20% of the transaction value

Business operators that violate these restrictions are subject to guidance and cease-and-desist orders from the administrative agencies.⁵ Although these measures themselves are not criminal penalties, any person (not legal entities) who violates a cease-and-desist order will be punished by imprisonment for up to two years or a fine of up to JPY 3 million, and the employer will also be punished by a fine of up to JPY 300 million.⁶

5. Article 7(1) of the AUPMR.

6. Articles 36(1) and 38(1) of the AUPMR.

7. https://jesu.or.jp/contents/news/news_0912/ (in Japanese only)

3. Major recent topics of gambling laws and regulations in Japan

3.1. Prize money in esports

(a) Gambling and the JeSU Report

Where participants pay an entry fee to take part in an esports tournament to receive prizes (including money), the question arises whether the conduct of the participants and the operation of the tournament by the organiser fall under gambling and running a place for gambling respectively, as

the participants are contesting the “acquisition” of the prize money or the “loss” of their entry fee. In this regard, according to the “Report on the Status of Efforts to Address Legal Issues Related to E-sports” (the “**JeSU Report**”)⁷ published by Japan esports Union (“**JeSU**”) in September 2019, JeSU concludes

that it is permissible to conduct competitions by collecting participation fees from participants in cases where:

- (i) the prize money/prizes is/are provided by a third party (such as a sponsor) other than the participants or the organiser; or
- (ii) (even if the organiser offers prize money) the participation fee is used solely to cover the costs of running the competition, such as venue expenses and staff activities, and not for the prize money/prizes itself/themselves.

This conclusion is based on the assumption that if the winnings are not funded out of the participation fee, the participants are not considered to be contesting the “acquisition or loss” of the prize money/prizes among themselves.

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Offering economic benefits by chance, such as raffles, superiority of specific acts, or the like are regulated as prizes under the AUPMR.

(b) Premiums

If the prize money in an esports competition is awarded on the basis of certain transactions (e.g., if the game is offered for a fee or if the amount charged affects the performance of the player), it may qualify as a provision of “premiums” by means of general prizes under the AUPMR. In such case, the prize money must be offered

within the limits described in section 2.2 above.

However, according to paragraph 5(3) of the “Implementation Standards for Public Notice on Designation of Premiums, Etc.” (the “**Implementation Standards**”) published by the Consumer Affairs Agency, “the provision of money or goods that are recognised as compensation for work” does not constitute the provision of “premiums.”

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Offering so-called “gacha” (random in-game items) in principle, are not considered gambling, and industry associations have provided interpretations of Gacha NFTs.

Thus, for example, if prize money is offered to participants selected by a certain method as compensation for their attractive performance to enhance the competitiveness and entertainment value of a competition, it is reasonable to consider that the provision of such prize money constitutes the provision of “compensation for work” above (and, therefore, the prize money is not a “premium”). The JeSU Report also expresses a similar opinion.

3.2. “Gacha” in online games

(a) Gambling

In Japan, offering so-called “gacha” (random in-game items, *a.k.a.* loot boxes or mystery boxes in other jurisdictions) in online games has generally been considered not to be gambling if those items cannot be redeemed for money. However, in the play-to-earn blockchain games that have emerged in recent years, users are allowed to sell NFTs (non-fungible tokens)

obtained through *gacha* services (“**Gacha NFTs**”) to third parties through in-game or external marketplaces and convert them into cryptoassets and/or money. The question arises whether such schemes are considered gambling due to the apparent “acquisition or loss” of the property being contested between NFT game providers and users, or among the users themselves.

In this regard, the Council for Sports Ecosystem Promotion published the “Guidelines for the Establishment of an NFT Package and Secondary Distribution Market for NFTs Using Sports Content”⁸ regarding services that combine packaged NFT sales and secondary distribution in September 2022, and the Blockchain Collaborative Consortium published the “Guidelines for Random-type Sales of NFTs” with other four organisations (collectively, “**BCCC, et al.**”)⁹ in October 2022. According to both sets of guidelines, regarding the relationship between the seller (a *gacha* service provider) and the user, in principle, it can be interpreted that the service provider will receive money or other consideration (property) equivalent to the actual sales price and the user will receive an NFT (property) whose value is equivalent to the actual amount paid. Therefore, it can be said that there is no “acquisition or loss” of property (unless the possible *gacha* result includes so-called “drawing a blank” (e.g., no NFTs are delivered)).¹⁰ BCCC, et al. also explain their idea that transactions take place between users in the secondary distribution market usually when only both parties agree on the price, so there is no mutual gain/loss relationship where the winner gains and the loser loses property, and no relationship of “acquisition or loss” of property arises.

These interpretations are all attempts to explain that the “acquisition or loss” of property does not arise in *gacha* services based on the assumption that the user always obtains a Gacha NFT of a value equivalent to the money they paid for the *gacha* service itself. However, it is not sufficient for NFT game providers to simply make such assertions. For example, if part of a Gacha NFT is sold at a lower price than the price of using the *gacha* service, the users who obtained the Gacha NFT through the service may be considered to have incurred a “loss” of property equivalent to the difference in price.

8. <https://csep.goleadgrid.com/api/documents/share/0caa404d1591139d6a0a0875d8e37c15> (in Japanese only)

9. <https://bccc.global/wp/wp-content/uploads/2022/10/NFT-guidelines.pdf> (in Japanese only)

10. However, when a secondary distribution market is established or a separate sales price is set in the primary distribution market, it is possible that a relationship of “acquisition or loss” of property between the seller and the user can be conceived.

(b) Premiums

If Gacha NFTs are considered as “premiums” by means of general prizes under the AUPMR, they must be offered within the limits of premiums described in section 2.2 above. However, according to paragraph 4(4) of the Implementation Standards, “transaction incidentality,” which is one of the requirements of “premiums,” is repudiated when a source of economic gain that would ordinarily constitute the essence of a transaction in light of general commercial customs is provided. Therefore, if users will purchase *gacha* services for the purpose of obtaining Gacha NFTs, the Gacha NFTs would be regarded as a source of economic gain that would, in light of general commercial customs, ordinarily constitute the essence of transactions comprising the conduct of the purchased *gacha* services, and thus it would be possible to understand that Gacha NFTs are not incidental to any of the transactions.

4. IRs

In December 2016, Japan enacted the Act on Development of Specified Integrated Resort Districts (the “**IR Act**”) for the establishment of IRs. An IR is a group of facilities envisioned to consist of an international convention center, exhibition hall, hotels, restaurants, shopping malls, entertainment facilities, casinos, etc. to be established and operated by private business operators. Under the IR Act, a certified facilities operator may, when it has received a license from the Japan Casino Regulatory Commission, legally conduct licensed types of casino business and provide casino gaming methods in the licensed area.¹¹ According to publicly available information, however, Japan’s first IR is not expected to open until autumn 2029 at the earliest.

5. Conclusion

Although gambling-related regulations may be concerning for broad service providers that randomly provide goods and services for a fee, they are quite general and abstract. Therefore, stakeholders must make individual analyses based on the specific circumstances to determine whether such random-type sales violate the Penal Code or the AUPMR. In conducting that research, it is essential to review the most recent standards and guidelines published by both the government and industry organisations because valuable reference materials in these areas have been frequently made available to the public.

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Stakeholders must make individual analyses based on the specific circumstances to determine whether random-type sales violate the Penal Code or the AUPMR.

¹¹. Article 39 of the IR Act.

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