

# Taiwan

Dr. George Lin



Lin &amp; Partners

Ross Darrell Feingold



## 1 Relevant Authorities and Legislation

### 1.1 Which entities regulate what type of gambling activity in your jurisdiction?

With limited exceptions, gambling in Taiwan is illegal. The current exceptions are:

- a. the Public Welfare Lottery, introduced in 2002 and regulated by the Ministry of Finance (“MoF”). The current licence holder, CTBC Bank (formerly known as Chinatrust Commercial Bank), originally obtained a licence for the period 1 January 2007 to 31 December 2013, and in 2013 again successfully bid for the licence, for which the term is 1 January 2014 to 31 December 2023;
- b. sports betting, introduced in 2008 and regulated by the Ministry of Education’s Sports Administration (formerly a cabinet level agency known as the Sports Affairs Council). The sports betting business operates under the name TaiwanSports Lottery (“Sports Lottery”). The current licence holder is a consortium that includes CTBC Bank, the local company ADATA, and the global company Intralota. Various wagers are available, such as point spread handicaps, match winner, point total, margin of victory, and “prop bets”, on events such as the first player to score, usually in the form of “accumulators” that require winning multiple wagers; and
- c. the Uniform Invoice Lottery, introduced in 1951, is regulated by the MoF. Businesses with a monthly turnover above a designated amount must issue receipts to customers at the point of sale; a unique lottery number is printed on this receipt. The MoF announces winning receipt numbers in every odd-numbered month. Unlike the Welfare Lottery and Sports Lottery, participation in the Uniform Invoice Lottery does not require the participant to purchase a lottery ticket or make a wager. Our comments herein are thus generally limited to the Welfare Lottery and Sports Lottery.

### 1.2 Specify all legislation which impacts upon any gambling activity (including skill and social games), and specify in broad terms whether it permits or prohibits gambling.

Chapter 21, Articles 266, 268, 269 and 270 of Taiwan’s Criminal Code broadly prohibit participation in, organising of, and profiting from gambling as well as lotteries. The Public Welfare Lottery Issue Act (the “Welfare Lottery Act”) authorises the Public Welfare Lottery, and the Sports Lottery Issuance Act (the “Sports Lottery Act”) authorises the Sports Lottery. The Uniform Invoice Lottery Act is authorised by Article 58 of the Value-added and Non-

value-added Business Tax Act, and the Uniform Invoice Award Regulations.

## 2 Application for a Licence and Licence Restrictions

### 2.1 Who can apply for a licence to supply gambling facilities?

Article 4 of the Welfare Lottery Act requires that the Public Welfare Lottery issuer be a bank appointed by the MoF. The MoF further requires that applicant banks must be a domestic bank as defined by the Financial Supervisory Commission (“FSC”), satisfy certain capital ratios, satisfy certain credit ratings, have no significant legal and regulatory sanctions in the preceding year for its banking business, and for an incumbent lottery operator, the lottery business and the bank must maintain sufficient provisions for bad debts.

For the Sports Lottery, the Sports Administration requires that the operator be a locally incorporated company with over 50% of the equity owned by a local person or institution, have paid-in capital of 2 billion New Taiwan Dollars, the directors/supervisors/executives must have no gambling- or financial crime-related imprisonment that concluded within the most recent ten years, a former public servant must have no corruption-related imprisonment that concluded within the most recent five years, have no unresolved personal or corporate (where the individual has legal liability) bankruptcy, have no service denial by a bills clearing house arising from insufficient funds whether ongoing or having ended within the most recent three years, there must be no ongoing event or event that ended within the most recent five years that impacts the individual’s creditworthiness, and the operator must not be engaging in any other dishonest activities. The Uniform Invoice Lottery is operated directly by the MoF via the issuance to retailers of standard format receipts.

### 2.2 Who or what entity must apply for a licence and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

Both the Welfare Lottery Act and Sports Lottery Act require the licensee to obtain approval to delegate the operation of the lottery to another organisation, such as a consortium formed by the winning bidder and partners who inject technology and/or experience.

Licensed agents and their employees, as well as premises where Welfare Lottery tickets are sold or Sports Lottery bets are accepted,

are also subject to guidelines issued by the authorities that cover issues such as knowledge, examinations and prudential standards similar to those imposed on operators.

### 2.3 What restrictions are placed upon any licensee?

In addition to the application process and regulatory oversight, the competent authorities have broad powers to revoke a licence. See question 2.5 below.

### 2.4 What is the process of applying for a gambling licence?

The authorities announce the applicable licence bid specifications for the Welfare Lottery and Sports Lottery at the time a tender is announced. Generally, a selection committee composed of government officials, scholars, and civil society representatives will review each applicant's submission package and award credit towards each of the designated evaluation criteria. The most recent tender for both the Welfare Lottery and Sports Lottery required a non-refundable deposit of 50 million New Taiwan Dollars along with, among other documentation, a detailed proposal for the operation of the lottery, including financial forecasts/anticipated amount of donations to welfare and sports causes, information about consortium members, and criteria for awarding an operating contract to another entity.

Despite the general prohibition on gambling in Taiwan, there are possible channels for gaming companies to hold public activities. In 2015 a global online poker company obtained confirmation from authorities in Taiwan that organisers of and participants in a poker tournament which does not involve cash wagers or prizes will not be prosecuted. Such a "no action" confirmation offers the possibility for gaming companies to explore new methods to market their products and services to Taiwan clients.

### 2.5 Please give a summary of applicable time limits and revocation.

The current term of the Welfare Lottery and Sports Lottery licence is ten years. The MoF and Sports Administration each have broad powers to revoke a Welfare Lottery and Sports Lottery licence, respectively, for reasons such as unresolved legal and regulatory violations, falsehoods in the application documents, prolonged technology failures, the financial regulator taking custody of the licensee, and unforeseen changes in laws and regulations. The revocation authority reserved to the MoF for the Welfare Lottery, and to the Sports Administration for the Sports Lottery, limits the compensation the licensee may seek in the event of a revocation.

### 2.6 By product, what are the key limits on providing services to customers?

Subject to the regulatory authority held by the MoF and Sports Administration, the Welfare Lottery and Sports Lottery licensees have latitude on product types and other customer service matters. However, Welfare Lottery and Sports Lottery prize payback rates are subject to caps of 60 and 78%, respectively.

### 2.7 What are the tax and other compulsory levies?

- a. Welfare Lottery: 40% of the Sports Lottery profits are appropriated to the national pension system, 5% to the national health insurance programme, and 45% to local

welfare funds. The net revenue means the total amount for which lottery tickets have been sold minus the sum of the amount paid out in prizes, administration, and other lottery activities expenses. Administration expenses may not exceed 15% of sales.

- b. Sports Lottery: 10% of the Sports Lottery profits are appropriated to the Welfare Lottery and the remaining 90% is used for sports development. The total prize money is capped at 78% of revenue, and marketing and management fees may not exceed 12% of revenue (10% of revenue if more than 50% of wagers are made via telephone, the Internet or other telecommunication devices).

### 2.8 What are the broad social responsibility requirements?

- a. Welfare Lottery: handicapped persons, members of Taiwan's indigenous communities, and low-income single parent families receive preference in applications to act as a lottery sales agent. A sales agent that has more than five employees is also required to hire at least one such person.
- b. Sports Lottery: similar preferences apply to the Sports Lottery. The Sports Lottery also reserves a percentage of retail agent outlets for persons who have specialised knowledge or achievement in sports, such as retired professional athletes. The operator must also implement measures to inform bettors who wager via telephone, the Internet or other telecommunication devices about problem gambling, addiction risks, and access to consultation and treatment. Persons less than 20 years of age, employees of the Sports Lottery operator, and professional athletes who attempt to bet on matches in which they participate are all prohibited from wagering. As in other jurisdictions, a self-exclusion mechanism at the bettor's request is available under which the account is closed.

### 2.9 How do any AML financial services regulations or payment restrictions restrict or impact on entities supplying gambling?

Transactions arising from wagers and prize payments must be conducted via financial institutions. Therefore, the lottery operators are subject to money laundering laws and regulations imposed on financial institutions reporting and record keeping requirements for cash transactions over 500,000 New Taiwan Dollars. However, the reporting requirement is waived where the customer is a lottery ticket agent depositing lottery revenues.

In addition, AML and banking regulations apply to financial institutions that provide cross-border remittance services to clients who remit money for gaming related purposes.

## 3 The Restrictions on Online Supply/Technology Support/Machines

### 3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

Chapter 21 of the Criminal Code is interpreted to also prohibit Internet-based gambling. The police and prosecutors will normally take action against both Taiwan-based gambling website operators and the bettors who place wagers.

In reality, websites hosted overseas do target (for example, with Chinese language content written in vocabulary used in Taiwan as distinguished from vocabulary used in other Chinese-language

speaking jurisdictions such as Hong Kong) bettors in Taiwan for wagers including sports events, card games, and other types of gambling, and Taiwan authorities have limited ability to prosecute operators who are outside their jurisdiction. Taiwan has periodically obtained cooperation from foreign authorities to extradite suspects who operate websites or call centres engaged in fraudulent activities. The courts will consider factors such as the location of servers and data processing, as well as where actual acts occur, to determine if jurisdiction is valid.

Overseas websites that accept wagers from clients who are physically present in Taiwan at the time of the wager are unlikely to succeed in collecting an unpaid debt. Several court decisions have held that the wagers are illegal and hence unenforceable.

### **3.2 What other restrictions have an impact on online supplies?**

Legal online wagers are limited to the Sports Lottery's website.

### **3.3 What terminal/machine-based gaming is permitted and where?**

Terminals operated by the Welfare Lottery and Sports Lottery are the only permissible terminal/machine-based gaming devices. The Electronic Game Arcade Business Regulation Act regulates pachinko-like machines, though such machines may not dispense cash prizes and are limited to dispensing vouchers that may be redeemed for gifts worth less than 2,000 New Taiwan Dollars.

## **4 Enforcement and Liability**

### **4.1 Who is liable for breaches of the relevant gambling legislation?**

As gambling is limited to the Welfare Lottery and Sports Lottery, other gambling activities are illegal and both bettors and organisers are liable for prosecution.

However, judicial authorities do have limited discretion to define gambling. Thus, if the purpose is for business promotion or philanthropy and a small number of persons participate in casino-like events that do not involve cash wagers, it is unlikely to result in prosecution. The above-referenced poker tournament is a recent example.

In 2015 the Taiwan staff of a global casino operator faced prosecution for the operation of an unauthorised remittance business and violations of Taiwan's banking laws. The accusation arises from the practice of offering the exchange of chips for currency to high rollers visiting casinos located outside Taiwan. The potential penalties include jail sentences that range from three to ten years and the authorities have impounded approximately 100 million United States Dollars (US\$100,000,000). At the time of this writing, the trial of the accused has yet to conclude, thus, the result on the outbound high roller business remains to be seen.

### **4.2 What is the approach of authorities to unregulated supplies?**

Prosecutors in Taiwan routinely prosecute bettors and operators engaged in gambling activities, whether in the case of casino style machines, card games, or wagers on sports and other events. Prison sentences can be for up to three years. In addition, Taiwan

prosecutors have expanded cooperation with overseas counterparts in order to enhance the ability to prosecute Taiwanese citizens based outside Taiwan who operate Taiwan-targeted gaming websites in contravention of applicable gaming laws.

### **4.3 Do other non-national laws impact upon enforcement?**

Taiwan's parliament, the Legislative Yuan, is currently reviewing a draft Casino Control Act, which will establish operator qualifications and create a regulatory framework for operators of integrated resorts with casino gambling. Once this act becomes law, it is possible that other non-national laws will impact enforcement of gambling activities in the jurisdictions where the integrated resorts are located. Other than the lotteries described herein, gambling remains illegal in Taiwan, and thus, to our knowledge, there are no non-national laws with regard to gambling enforcement.

### **4.4 Are gambling debts enforceable in your jurisdiction?**

Article 71 of Taiwan's Civil Code provides that a juridical act which violates an imperative or prohibitive provision of the law is void. Taiwan courts will thus not enforce a gambling debt incurred in Taiwan.

However, Taiwan courts do enforce gambling debts incurred in a jurisdiction where the wager is legal.

## **5 Anticipated Reforms**

### **5.1 What (if any) intended changes to the gambling legislation/regulations are being discussed currently?**

Pursuant to Article 10-2 of Offshore Islands Construction Act, amended in 2008, casinos within an integrated resort, which contains hotel, tourism facility, meeting/incentive/conference/exhibition ("MICE") or shopping centre, are permitted on offshore islands where the referendum in favour of casinos has been passed. To regulate such casinos, Taiwan's cabinet, the Executive Yuan, submitted the draft Casino Control Act to the Legislative Yuan in May 2013.

The Casino Control Act will regulate integrated resorts with casinos, which are only permitted to be established on Taiwan's offshore islands. This follows on from the amendments to the Offshore Islands Construction Act, passed in 2008, to legalise integrated resorts with casinos, as well as hotels, facilities for tourists, MICE facilities, and shopping areas. A county level referendum is required to approve such facilities.

The Casino Control Act will govern the establishment and operation of casinos, operator qualifications, shareholders' requirements, gambling equipment, and key employee qualifications. The Ministry of Transportation and Communications has concurrently issued a draft Integrated Resort Investment Regulation governing the licensing process.

The following comments are based on the drafts of the Casino Control Act and Integrated Resort Investment Regulations, and are subject to change before being passed into law and formally issued by the ministry, respectively:

- Number of Licences: to be determined by Taiwan's cabinet in consultation with the relevant local government.
- Licence Term: initially 30 years and renewable for another 30 years if the operator passes regulatory evaluations.

- Gaming Floor to Integrated Resort Ratio: 5%.
- Single Operator Requirement: a single company must operate both the integrated resort and the casino.
- Gaming Revenue Tax:
  - Casino Tax: up to 7% of gross gaming revenue paid to the county government where the property is located.
  - Franchise Fee: 7% of gross gaming revenue (years one to 15), 8% of gross gaming revenue (years 16 to 25), 9% of gross gaming revenue (from year 26 onward), paid to the central government.
- Public Benefit Levy: 0.5% of gross gaming revenue.
- Problem Gambling Prevention Fund Contribution: 0.5% of gross gaming revenue.
- Licence Fee: to be determined, based on supervision cost, but estimated to be 10 million U.S. dollars per year.
- Corporate Tax: 17%.
- Corporate Structure: locally incorporated company.
- At least one main shareholder must have integrated resort management experience.
- No local partner requirements for foreign investors.
- Main shareholder, defined as a shareholder with more than 20% shareholding, must maintain this level for ten years and may not own shares in another Taiwan integrated resort operator.
- Minimum Paid-in Capital: to be determined based on the scale of investment.
- Gambling on Credit: permitted, but only for foreign nationals and locals who have previously deposited 2 million New Taiwan Dollars with the operator.
- Junket operator rules are to be determined.

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#### Dr. George Lin

Lin & Partners  
27F, No. 99, Sec. 2 Dunhua S. Rd.  
Taipei  
Taiwan

Tel: +886 2 2705 5929  
Fax: +886 2 2731 2896  
Email: [attorneys@linandpartners.com.tw](mailto:attorneys@linandpartners.com.tw)  
URL: [www.linandpartners.com.tw](http://www.linandpartners.com.tw)

Dr. George Lin is the managing partner of Lin & Partners and he specialises in banking, securities, and gaming law matters. Dr. Lin is recognised by Chambers Asia as a leading/Band 1 attorney for Gaming in Asia, and by Legal 500 and AsiaLaw Profile in areas including Banking & Finance. Dr. Lin has served as legal advisor to numerous government agencies and trade associations, including the Ministry of Transportation and Communications, the government's economic planning agency the National Development Council, Taiwan Financial Services Roundtable, National Development Fund, Taiwan CPA Association, Centers for Disease Control, Institute for Information Technology, Taiwan Bankers Association, and Central Deposit Insurance Corporation. Dr. Lin is an arbitrator at the R.O.C. Arbitration Association, and also an associate professor at Taiwan's Soochow University. Dr. Lin has a Ph.D. from National Cheng Chi University, an LL.M. from Soochow University, and an LL.B. from National Taiwan University.



#### Ross Darrell Feingold

Lin & Partners  
27F, No. 99, Sec. 2 Dunhua S. Rd.  
Taipei  
Taiwan

Tel: +886 2 2705 5929  
Fax: +886 2 2731 2896  
Email: [attorneys@linandpartners.com.tw](mailto:attorneys@linandpartners.com.tw)  
URL: [www.linandpartners.com.tw](http://www.linandpartners.com.tw)

Ross Darrell Feingold, of counsel to Lin & Partners, has extensive experience with legal, regulatory, and policy issues after working for almost 20 years in Asia. Prior to joining Lin & Partners, Ross worked at the Royal Bank of Scotland in Hong Kong, for Deutsche Bank's equity derivatives legal team in Hong Kong, and J.P. Morgan's credit derivatives legal team in Singapore. Ross presently serves on the global board and as Asia director of The Association of Americans Resident Overseas, a non-partisan advocacy organisation that represents the interests of U.S. citizens who live abroad. Ross received undergraduate degrees in East Asian Studies and Political Science, *cum laude*, from Bucknell University, and a *juris doctor* from American University. He is a New York and Washington D.C.-licensed lawyer. Ross studied Mandarin at the National University of Singapore and the National Taiwan Normal University.



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59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

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