

# Online and land-based gambling in Taiwan

There has been much speculation about whether legislators in Taiwan are planning to regulate online gambling, which has traditionally been outlawed. Marcus Clinch, of Eiger Law's Taipei office, explains how much of the discussion revolved around whether Taiwan's Criminal Code could be amended to allow online gambling - not on whether it should be legalised. Clinch examines the history of enforcement against online gambling companies and individuals in Taiwan, assessing whether there is room - within the regulatory gaps and concessions that do exist for internet gaming companies - to offer online gambling services.

Global gaming trends have recently seen many jurisdictions that are traditionally adverse to online gambling reevaluate their once conservative positions. There had been some tempered optimism this year that Taiwan might follow those trends as well as it set out to draft a regulatory regime to govern casino gambling in the country, or as it set out to determine how to salvage its troubled sports lottery system. It does not, however, seem that there will be much in the way of online options to satisfy Taiwan's punters in the coming years - or at least not legal ones anyway.

Gambling and lotteries have traditionally been prohibited in Taiwan. With such a large underground market for both, however, the issue of legalisation has been around for over two decades. The first crack in the prohibition occurred with the establishment of the National Lottery - first ticket sales took place at the end of 1999. Its success and the estimated US\$2 billion to US\$3

billion underground market for sports betting led to the establishment of the Sports Lottery, with first ticket sales in 2008. Taiwan then partially lifted the prohibition on gambling by permitting the establishment of casinos on its offshore islands in 2009 - though none have yet been approved and the regulatory regime will most likely not be finalised and in place until late 2012. Only the Sports Lottery permits an online option, and the limited nature of the actual business model has proven unattractive to most sports betting enthusiasts. The lack of a true online option and the limited terrestrial options over the last decade have meant that punters have turned to offshore online sites as well as domestic ones. This presents risks for all involved.

The Criminal Code itself does not define gambling, but academic and judicial opinion on the issue has defined it as where parties engage in activities in which the creation of a debt is conditioned on an uncertain condition. This has been interpreted to include a broad scope of activities and would clearly cover the placing and taking of bets. The relevant Article for the prohibition on gambling is Article 266 of the Criminal Code (it should also be noted that Article 269 of the Criminal Code prohibits the running of a lottery for gain without government permission). Article 266 provides that a person who gambles in a 'public' place or a 'place' open to the public shall be punished, unless the item for which he gambles is one to provide temporary amusement - the case of a 'friendly wager'. The term 'place' traditionally had been interpreted as a substantial place such as a park, theatre, department store, arcade, casino and so forth. It has thus been the 'public place' element that has at times fueled a

discussion and debate on the illegality of online gaming.

The hosting of online gambling has, however, been found to trigger Article 268 of the Criminal Code - it provides that an individual who, for the purposes of gain, furnishes a location for gambling or assembles persons to gamble shall be punished. There has been no debate on whether hosting the physical infrastructure for the operation of gambling electronically in Taiwan would violate Article 268 of the Code. The authorities in Taiwan regularly uncover and shut down illegal online domestic gaming operations: for example, the authorities successfully raided the operations of an online sports gambling operation in 2007 - arresting 18 suspects. The operation appeared to have based its infrastructure - including its servers - solely within Taiwan and had used a dummy law firm as a front to handle the collection of wagers and to payout successful bets. The operation reportedly averaged US\$3 million a month in wagers. The issue with online gaming has been focused on domestic punters and offshore operations.

The debate on the illegality of online gaming has centered on the placing of bets online on illegal domestic sites and the placing of bets by Taiwanese residents online on offshore sites and the taking of bets by those sites. Quite simply, however, opinion has been split on whether it is necessary to amend the Criminal Code or whether the current wording can be extended by the Courts to include online gambling. That is to say, the issue has not been - for the most part - whether it should be illegal, but whether the law is adequate in its current form. The trend by the courts has been to err on the side of finding any online gambling

illegal. The authorities will regularly arrest and charge individual punters when targeting domestic online operations and, in the past, also charged punters for gambling on offshore online sites.

Offshore gambling operations targeting the local market have fared slightly better, but mainly due to the issue of jurisdiction. The courts in Taiwan will consider all relevant factors when determining jurisdiction over internet crimes. This includes the location of the website and e-mail servers, the location of data processing servers and the location of actual acts. In a situation where the website servers, e-mail servers and data processing servers have been located outside of Taiwan, the courts will likely not take jurisdiction. However, hosting the physical infrastructure outside of Taiwan and targeting the local market can - and has - triggered a criminal investigation.

The Criminal Investigation Bureau (CIB) investigated an offshore gambling operation's practices in 2004. The investigation had been triggered as the company had been accepting bets from and targeting residents of Taiwan. Details from the investigation announced by the Criminal Investigation Bureau offer an insight into the application of Article 266 and Article 268 to offshore online gambling and the likelihood of action being taken:

- The company had maintained an offshore, traditional Chinese character website that directly targeted/solicited business from Taiwanese residents.
- The company hired a representative in Hong Kong to handle Taiwan and a customer service number for Taiwanese customers had been listed on the website.
- The company allowed local residents to place bets on the outcome of the 2004 presidential

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election in Taiwan. This appears to have been what prompted the investigation and action at the time.

- The CIB felt that placing/receiving bets from computers in Taiwan or transferring/receiving funds overseas from Taiwan for gambling would violate Articles 266 and 268 of the Criminal Code.
- The company had no direct connection or ties in the local market and no one for the CIB to pursue locally. Representatives of the company or other foreigners involved would be detained and investigated if they travelled to Taiwan in the future.
- The CIB had monitored web traffic, data and communications from local gamblers to overseas servers to build its case.
- The local gamblers identified had been contacted by the CIB for questioning. Action against the individual gamblers does not appear to have been reported. The CIB will, however, usually take action.

The CIB's focus, however, appears to be more upon domestic online gambling operations. Jurisdiction remains an issue and Taiwan has only entered into a limited number of Agreements on Mutual Legal Assistance in Criminal Matters with other countries. This hinders efforts, as does the fact that most offshore gambling operations have been established in jurisdictions where such activities do not violate the laws of that jurisdiction. As will be seen below, the advertising or marketing of offshore gambling sites in Taiwan violate the Criminal Code.

It should be noted that the operation of an onshore, unlicensed and online lottery would violate Article 269 of the Criminal Code. The operation of an offshore online lottery open to Taiwanese citizens and residents

would present the same challenges as found with offshore gambling sites. Individuals in Taiwan found to be acting as agents or intermediaries, however, could face investigations and sanctions.

Article 153 of the Criminal Code provides that a person who - by writing, picture, word of mouth or other means - publicly commits one of the following acts shall be punished:

- incites another to commit a criminal offence;
- incites another to violate the law or disobey a legal order.

To market or advertise gambling electronically will violate Article 153 of the Criminal Code. While the actual issue of whether gambling online violates the Code has been debated, the marketing and advertising of gambling online has not. For example, the Taipei District Court sentenced twelve individuals to terms of imprisonment ranging from four months to one year for violations of Article 267 (now abolished) and Article 153 in 2006. The defendant company acted as a local agent for an overseas online gaming company. This included advertising and promoting that offshore company's online gambling services locally.

The laws and regulations governing advertising and broadcast media also include prohibitions that would cover the marketing and advertising of offshore online gambling sites in Taiwan. Overseas advertising and marketing targeting Taiwanese citizens may fall under the criminal prohibitions, however it would be difficult for the local authorities in practice to take action without a local entity, as the earlier example showed.

The other hurdle that offshore online gambling operations face rests with payments. Article 71 of the Civil Code provides that a

juristic act contrary to an imperative or prohibitive provision of law is void. The local courts consider gambling and profiting from it contrary to the law and, as such, a creditor has no basis in Taiwan for collecting debts arising from gambling.

Article 71 would provide a basis to dismiss an action in Taiwan to force payment for illegal activity. There is opinion that where credit card debts are incurred from gambling online that a local bank may still be obligated to pay the debt, but this would be based on the contractual relationship that would be present between the bank and credit card company.

Significant case law has also arisen over the years covering the enforcement of gambling-related debts from brick and mortar operations. The majority of these judgments have, however, favored the creditor, but on the basis that credit had been extended by way of loans to the punters, rather than the extension of specific credit for gambling.

The market in Taiwan remains attractive to offshore gambling interests. It does not appear that there will be significant changes in the foreseeable future that would open up the online market to domestic punters. The final version of the proposed Gaming Act will likely clarify the current interpretation that online gaming constitutes an offence under the laws of Taiwan. The draft Act, in its present form, does not appear to allow for licensed online models. Taiwan has two large social organisations that have significant influence politically and both have

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positions opposing gambling. These groups relented on the lotteries and on the offshore island casinos - though establishing a casino on an offshore island requires a referendum by local residents first, which has yet to successfully happen so this is only a limited concession - but further concessions to allow new domestic online gambling seem very unlikely at this stage. This leaves parties interested in legally entering the Taiwanese market two options: the Sports Lottery and i-gaming.

Taiwan's Sports Lottery has not been a success, but its governing Act allows online sales and thus could support an online sports gambling platform. Changes need to be made to the current model and the regulatory regime governing it, however to make it or any new model viable and leave it in a position to compete with the successful and established underground market. The term for the current licence expires at the end of 2013 and it had been hoped that the competent authorities would act to allow for the possibility of different models by the time that the RFB (Room, Food, Beverage) licence is issued. That will likely take place summer 2012, but to date there has only been indications that the necessary changes will not take place before then, if at all. Stories circulate and persist that an entirely different model may be used, or that a second model will also be introduced at some stage in the future. Tier 1 and Tier 2 online players continue to show a degree of interest, though that interest has tempered in the last six months.

Internet-gaming - where credits earned can be used to purchase items online - has become increasingly popular, but remains a somewhat grey area under the law. The majority of models fall somewhere between regulations governing online gaming and e-commerce set out by the Consumer Protection Commission, general provisions and some specific guidelines set by the Fair Trade Commission and the gambling for temporary amusement exception found in the case law of Article 266. Internet-gaming currently appears to be where the market will be heading in Taiwan, as the prospects of more traditional online gambling remain dim in the short term, at least absent to changes to the Sports Lottery.

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