

Gaming

## Public Consultation on Proposed Amendments to Laws Governing Gambling Activities

### Introduction

The Ministry of Home Affairs ("**MHA**") is conducting a public consultation ("**Consultation**") on proposed amendments to the laws regulating gambling in Singapore. The amendments primarily seek to address two recent trends in the gambling landscape: (1) Advancements in technology – which have made gambling products more accessible, leading to the increase in online gambling; and (2) Blurring of boundaries between gambling and gaming, given that new business models have increasingly introduced gambling elements in products that are not traditionally not related to gambling, e.g. chance-based loot boxes in video games. Therefore, it appears that MHA intends to enact a single consolidated Act in order to streamline current provisions set out in the various disparate legislation, while simultaneously proposing updates to the law. This Consultation is open for public feedback from **12 July 2021 to 10 August 2021**.

The full Consultation is available [here](#).

### Proposed Changes

The proposed changes target four main areas: (1) amending the definition of "gambling"; (2) exempting physical social gambling among family and friends, subject to certain safeguards; (3) providing guidelines for certain games with gambling elements; and (4) streamlining penalties across the different gambling legislation.

#### **Definition of Gambling**

The definition of "gambling" currently differs across different pieces of legislation, including the Common Gaming Houses Act ("**CGHA**") and the Betting Act ("**BA**"), which were first enacted in the 1960s. MHA's proposal is aimed at achieving a consistent definition of the term across the various gambling legislation, as well as ensuring that such a definition is technology-neutral so as to cover existing and emerging gambling products.

**Contribution Note:** This Client Update was written with contributions from Edina Lim, Associate, and Yong Yi Xiang, Associate, from Intellectual Property, Technology and Gaming.



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MHA's proposed definition of gambling is as follows:

*"Gambling means all or any of the following:*

- a) Betting, which is the staking of money or money's worth on the outcome of any competition, event or process, and any other event, thing or matter specified in subsidiary legislation;*
- b) Gaming, which is playing a game of chance for money or money's worth; or*
- c) Participating in a lottery, which is any game, method, device, scheme or competition whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot."*

As a result of adopting a technologically neutral approach, the proposed definition of gambling and its related terms is broader in scope than the existing definitions in the BA, CGHA and Remote Gambling Act ("**RGA**"). We set out a comparison of the existing definitions with the proposed definitions below:

<b>Term/ Act</b>	<b>Existing definition</b>	<b>Proposed definition</b>
<b>Betting (RGA)</b>	"betting" means the staking of money or money's worth — (a) on the outcome of a horse-race or sporting event (whether or not the horse-race or sporting event has already occurred or been completed); or (b) on any other event, thing or matter specified or described by the Minister, by notification in the Gazette, to be betting for the purposes of this Act;	the staking of money or money's worth on the outcome of any competition, event or process, and any other event, thing or matter specified in subsidiary legislation
<b>Gaming (CGHA)</b>	the playing of any game of chance or of mixed chance and skill for money or money's worth;	playing a game of chance for money or money's worth
<b>Gaming (RGA)</b>	"gaming" means playing a game of chance for money or money's worth;  "game of chance" includes — (a) a game that involves both an element of chance and an element of skill; or (b) a game that is presented as involving an element of chance, but does not include any game, method, device, scheme or competition specified or described by the Minister, by order in the Gazette, as not to be a game of chance for the purposes of this Act;	

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<b>Lottery (CGHA)</b>	Includes any game, method, device, scheme or competition whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn, exercised or managed within or without Singapore;	any game, method, device, scheme or competition whereby money or money's worth is distributed or
<b>Lottery (RGA)</b>	<p>"lottery" —</p> <p>(a) means any game, method, device, scheme or competition whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn, exercised or managed inside or outside Singapore; and</p> <p>(b) includes any other game, method, device, scheme or competition specified or described by the Minister, by notification in the Gazette, to be a lottery for the purposes of this Act;</p>	allotted in any manner depending upon or to be determined by chance or lot.

Significantly, the proposed broader definition may result in activities or products which MHA may have no intention of treating as gambling activities or products falling within the definition of gambling. For instance, investments in financial products already regulated by the Monetary Authority of Singapore through other legislation should not be treated as gambling products. Another potentially contentious issue would be whether esports tournaments which charge an entry fee and reward the winners with cash prizes and money's worth would be treated as gambling activities. Such treatment may hinder Singapore's plans to position itself as a leading esports hub in the region.

To address this issue, MHA has stated that it will evaluate various activities and products and where MHA determines that these should not be classified as gambling, MHA will expressly carve out such activities and products from the definition of gambling.

**Social Gambling**

Currently, social gambling is not explicitly permitted under existing gambling legislation, whether such gambling takes place physically or remotely. As regards physical gambling, while the CGHA and BA do require some form of "access to the public" in order for liability to attach, social gambling has not expressly been legalised. In terms of remote gambling, the RGA currently prohibits games of chance involving payment and the chance to win money or money's worth. Nonetheless, authorities currently take a practical approach toward social gambling, and only prohibit such activities if there is a risk to law and order, or the potential to cause social harm. In the Consultation, MHA is proposing to explicitly permit physical social gambling among family and friends under current legislation, subject to conditions

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that safeguard against criminal exploitation. However, MHA has decided not to exempt online social gambling among family and friends, due to difficulties with enforcement.

The Consultation thus proposes that physical forms of social gambling are exempted if **all** the following criteria are met:

- (a) The primary purpose of the gathering is for a social occasion and there is a bona fide social relationship among participants;
- (b) The gambling is not promoted or conducted for the purposes of trade or business;
- (c) The gambling activity is not for the private gain of any person other than the extent of the game's winnings; and
- (d) The gambling activity is conducted in enclosed areas of private residence, provided that the participants are invitees of the owner/tenant.

**Annex A** to the Consultation also sets out seven examples to illustrate how these criteria will be applied. For example, charging an admission fee (even for family members) in order to gamble is disallowed, and inviting members of the public (i.e. people who are not friends and family) to gamble is disallowed.

However, there are certain examples which are more difficult to reconcile. For example, the distinction between an enclosed and an unenclosed space may be ambiguous. While the Consultation explains that playing mahjong in an outdoor driveway is prohibited, it is unclear if this includes a sheltered driveway. What if the mahjong was played at a gazebo in the garden of the house?

Additionally, the distinction between social gambling and gambling for the purposes of trade or business may not be clear. For example, one would be prohibited from inviting one's clients to one's home to gamble, if it is for the purpose of promoting one's business. However, this is likely to pose enforcement difficulties given that the intention of organising a gambling event is hard to ascertain. It is also unclear what a "*bona fide social relationship*" would entail. For example, while it is clear that inviting members of the public to come to one's home to gamble would be prohibited, it is less clear whether posting on one's Facebook page extending invitations to one's Facebook friends would amount to exceeding the boundaries of a "*bona fide social relationship*", such that these invitations are prohibited.

Understandably, it will be difficult for members of the public to know how the lines will be drawn in terms of what is exempted and what is not. However, it should come as some comfort that MHA's primary concern is with the operations of syndicates seeking to exploit the exemption to conduct illegal gambling activities.

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**Games with Gambling Elements**

As the lines between "gambling" and "gaming" have been blurred, MHA will evaluate various activities and products to determine if they should be regulated as gambling activities. Two such products under consideration are as follows:

- (a) Mystery boxes: Customers purchase these boxes which contain items of varying values, without knowing the exact contents of these boxes. Some mystery boxes contain items of high value, such as smart phones and game consoles. MHA is concerned that the opportunity to win such high value prizes could induce gambling behaviour.
- (b) Arcade games and claw machines: Many arcades offer games which reward players with a varying number of tickets based on the players' performance. These tickets can then be redeemed for prizes. In recent years, claw machines have grown in popularity. MHA is concerned that arcade games and claw machines can have elements of chance, as well as the trend that arcades have started to offer high value items such as smart phones as prizes for the games, which could induce gambling behaviour.

MHA's proposed solution to regulate the two aforementioned products is to introduce a prize cap of S\$100 for mystery boxes, arcade games and claw machines, with the cap of S\$100 being determined based on a survey of Singapore citizens and permanent residents.

While MHA's decision to seek a middle ground instead of banning arcade games and claw machines completely is sensible, the present proposal could benefit from more clarity. For instance, it would be useful if MHA could share any studies which demonstrate the impact of mystery boxes, arcade games and/or claw machines as well as the quantum of the prizes on gambling behaviour. It is also unclear whether arcade games and claw machines which do not have elements of chance would also be subject to the S\$100 prize cap. There is also the question of whether trading card games such as NBA trading cards or Magic: The Gathering would be deemed to be mystery boxes. If they are so deemed, it is not hard to imagine a scenario in which a newly released trading card game starts out with cards being valued below the S\$100 prize cap, with the value increasing over time to hundreds or even thousands of dollars. In such a scenario, it is unclear if such card games would be banned at that point and whether such a ban would be fair to the trading card game company, given that the rise in card value may be based on factors beyond the company's control. Finally, who is to determine the value of the prize to begin with?

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#### ***Online Games of Chance with Virtual Prizes***

With the wave of digitisation that has brought about an influx of online and video games, the incorporation of gambling elements into such games is perhaps inevitable. This has taken the form of in-game micro transactions which resemble gambling, such as loot boxes which provide players with randomised virtual items such as skins or weapons in exchange for in-game credits or real-world money. Under the present regulatory framework, such games of chance which offer virtual prizes are not considered as gambling as long as there are no in-game monetisation facilities that allow players to exchange the virtual prizes for real-world payouts.

MHA proposes to fine tune this regulatory framework in two respects:

- (a) First, MHA seeks to impose conditions on the transfer of virtual items out of the online gaming environment to third party platforms for purposes of encashing them or exchanging them for real world consideration. These conditions are to ensure that such transferable virtual items are retained within the context of gameplay and entertainment. This serves to mitigate the risks of a secondary market arising in respect of the sale of transferable virtual items, e.g. on a third-party hosted exchange. An example given is that games which allow players to use virtual items from other games as a form of stake on casino games, such as skin betting websites, will not be allowed. While this is a laudable step in the right direction, the specific conditions which are sought to be imposed remain to be seen. It is conceivable that difficulties may arise in clearly demarcating the boundaries within which the transfer of such virtual items are allowed to occur.
- (b) Secondly, the Consultation proposes to allow in-game monetisation facilities for free-to-play games (where players do not have to pay to play or receive virtual prizes), subject to certain safeguards set out in **Annex B** to the Consultation. Specifically, these safeguards are as follows:
  - i. The online game of chance must be conducted by the business organisation for the purposes of promoting the sale of any product of service (other than a gambling service) sold or supplied by that business organisation in the course of business in Singapore.
  - ii. There must be no stakes involved in the online game of chance except for the levying of a reasonable charge for the promotional product or service that is sold or supplied to qualify for participation in the said online game of chance.
  - iii. The business organisation must not derive any profits from conducting the online game of chance or from the game per se.
  - iv. The online game of chance cannot involve any game, method, device, scheme or competition which has already been declared to be a game of chance or a mixed game of

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chance and skill in existing gambling legislation such as the CGHA. For instance, the games of Poker, Baccarat, Mahjong, Roulette and Fishing (otherwise known as *Ang Tiam* or *Tiew Yue*) cannot form the subject matter of the online game of chance.

- v. The online game of chance cannot involve any instrument or appliance for gaming which has already been declared to be an instrument or appliance for gaming in existing gambling legislation such as the CGHA. Examples of such instruments or appliances which are prohibited include dominoes, mahjong tiles, roulette wheels and playing cards.
- vi. The online game of chance must not contain any gambling-related advertisement or promotion.

It is noteworthy that MHA is seeking to regulate free-to-play online games, as the playing of such games does not presently constitute an offence under the RGA. This may signal that MHA is concerned that even free-to-play games may induce gambling behaviour.

In addition, the actual implementation and enforcement of the above conditions may pose issues given the vast multitude and relative ease of creating free-to-play online games with in-game monetisation facilities. This is further complicated by the fact that such online and video games transcend physical and geographical boundaries. For instance, it is unclear if a business organisation with no physical presence in Singapore would be deemed to be conducting an online game of chance for the purposes of promoting the sale of its product or service in the course of an online business in Singapore.

While the proposed amendments to the existing regulatory approach towards online and video games clearly evince the practical and proactive approach of the regulatory authorities in managing the interface of technology and gambling, the Consultation has left largely unaddressed the practical issues of implementation and enforcement, which are perhaps of greater pertinence to business organisations. Greater clarification from the MHA is necessary in this respect.

### **Penalties**

At present, a piecemeal approach has been undertaken towards the regulation of gambling activities, with different governing legislation for different types of gambling, e.g. remote vs. terrestrial gambling, slot machine vs. casino gambling, and public vs. private lotteries. MHA proposes to harmonise the regulatory approach towards all types of gambling activities by adopting a three-tier penalty structure for punters, agents, and operators involved in illegal gambling across all forms of gambling activities. At present, this three-tier penalty structure is applicable only to remote gambling activities.

In addition, MHA proposes to enhance the penalties for **repeat** offenders who facilitate or operate illegal gambling services in order to increase deterrence:



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- (a) An agent who facilitates others to gamble illegally is to be liable to a fine of not less than S\$20,000 and not more than S\$200,000, and imprisonment not exceeding five years. A repeat offender is to be liable to a fine of not less than S\$30,000 and not more than S\$300,000, and imprisonment not exceeding seven years.
- (b) An operator of an illegal gambling service is to be liable to a fine of not less than S\$50,000 and not more than S\$500,000, and imprisonment not exceeding seven years. A repeat offender is to be liable to a fine not less than S\$70,000 and not more than S\$700,000, and imprisonment not exceeding ten years.

Penalties for repeat offenders for punters of illegal gambling services will not be increased as MHA intends to focus its enforcement efforts on illegal gambling agents and operators.

The proposed harmonisation of the penalty framework across all forms of gambling activities introduces much needed consistency that was previously absent in the piecemeal regulatory approach towards gambling activities. Given that the proposed three-tier penalty framework is adapted from the current penalty structure for remote gambling activities, it is likely that Singapore courts will take guidance from the existing sentencing precedents for illegal remote gambling activities when applying this penalty framework across other forms of illegal gambling activities. That said, it remains to be seen whether under the new laws, illegal remote gambling activities will attract more severe sentences in light of their relatively wider reach and accessibility as compared to physical gambling activities, which is the approach which the courts have taken (see the case of *Koo Kah Yee v Public Prosecutor* [2020] SGHC 261 which was covered in our previous Client Update "*Singapore High Court Lays Down Sentencing Framework for Unlawful Provision of Singapore-Based Remote Gambling Services*" accessible [here](#); as well as an earlier 2019 case which was covered in our previous Client Update "*Court Rules Online Gambling Offence to be Deserving of Harsher Punishment than Offences under Common Gaming Houses Act*" accessible [here](#)).

### Concluding Remarks

On the whole, the proposed amendments in the Consultation are a welcome update to the gambling scene in Singapore, which has evolved significantly in recent years. Having gambling legislation that takes into account the practical realities of the current gambling landscape is a step in the right direction. However, to ensure that there is clarity in the law such that those who may be involved in some way or other in gambling activities do not have to operate in a legal grey area, clarifications should be sought from MHA on certain amendments. For example, as regards the definition of gambling and the subsequent carve outs, representations should be made to MHA on what types of products should fall outside the definition of gambling – such as esports tournaments.



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It may also be beneficial to propose that MHA include carve outs for what falls outside the scope of "facilitating" gambling, including carve outs within the definition of "gambling" itself. For example, MHA should consider explicitly excluding the provision of IT services or other technological solutions to gambling operators from what constitutes "facilitation" of a gambling service. In respect of the changes to social gambling, clarification should be sought on the rationale behind treating different areas of one's private residence differently based on whether they are fully enclosed, semi-enclosed or without enclosures. As regards the online games of chance, clarification should be sought on the scope of "*in the course of business in Singapore*", to determine its effect on overseas operators who may not have a physical presence in Singapore.

Our team of gaming lawyers will be happy to assist should you require advice in making representations to MHA on the Consultation.

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