
CLIENT UPDATE 2014 SEPTEMBER

GAMBLING LAW

New Legal Framework To Regulate Remote Gambling In Singapore

Introduction

Following on from public consultations conducted by the Ministry of Home Affairs from 29 November to 10 January 2014, the Remote Gambling Bill (Bill No. 23/2014) (“**Bill**”) was introduced in Parliament on 8 September 2014.

The Bill seeks to create a framework to regulate remote gambling in Singapore. The remote gaming industry has, to-date, been largely unregulated in Singapore, given that the current gambling legislation, *vis*, the Common Gaming Houses Act (Cap. 49) (“**CGHA**”) and the Betting Act (Cap. 21) (“**BA**”), which were first enacted in the 1960s and which have not received major updates in the decades since they were passed, are inadequate in regulating gaming and betting activities conducted through remote means.

The Singapore Government had, in the call for public feedback, raised three main concerns that warranted the introduction of the Bill:

- (a) The ubiquitous nature of the Internet leaves Singaporeans more at risk to the dangers of gambling than before, particularly the more tech-savvy younger generation;
- (b) Online gambling – such as blackjack or poker – are usually played on a repetitive basis and can affect those with addictive personalities; and
- (c) Gambling operations can potentially become a conduit of funds for other illegal activities and syndicated crime.

These concerns have now been expressly recognised under Section 7 of the Bill, which sets out the purposes for which the Remote Gambling Act (“**RGA**”) has been enacted.

Consistent with these objectives, the provisions in the Bill reflect the strict approach which Singapore intends to adopt in regulating the remote gambling industry, as can be seen from the broad and comprehensive range of offences which affect individual users of the remote gambling services as well as operators and their agents offering such services both within and from outside of Singapore. Further, the Bill introduces a number of complementary measures to make up for the limitations in enforcing any penalties imposed against foreign operators, which measures include blocking access to online gaming websites, and blocking of payments to and from persons participating in any unlawful remote gambling activity. Finally, the Bill provides for a tightly controlled licensing regime, which would restrict the number of gambling operators qualified to obtain a certificate of exemption to offer remote gambling services to the Singapore market.

The regulatory regimes of a number of jurisdictions were studied by the MHA in drafting this Bill, including Hong Kong, Norway, France and the United Kingdom. Based on the provisions of the Bill, including in particular those relevant to the issuance of a certificate of exemption, Singapore’s approach appears to lean towards the Hong Kong and Norwegian models of having only the state operator(s) offering remote gambling services, as opposed to more liberal gambling markets like the United Kingdom, which does not limit the number of licences that may be granted to prospective online gambling operators.

CLIENT UPDATE 2014 SEPTEMBER

GAMBLING LAW

Features of the Remote Gambling Bill

Scope

The Bill governs gambling activity which is conducted not just over the Internet, but also through the telephone, interactive television, radio or any other communication technology (collectively referred to in the Bill as 'remote communication').

However, the provisions of the Bill will not apply to a person who merely provides or operates facilities for network access, or provides services or connections for the transmission or routing of data. Such persons would include an internet service provider or a network operations centre provider.

Offences and parties affected

Once the Bill is passed and the law takes effect, remote gambling will be rendered illegal in Singapore unless the specific exemptions apply. The provisions of the Bill not only affect individuals based in Singapore, but also extend extra-territorially to cover remote gambling operators and their agents based locally and abroad. The prohibitions under the Bill also cover a wide range of activities, as summarised in the table below:

Party	Offences
Singapore-based individuals	<p>Gambling using remote communication and a remote gambling service which is not provided by an exempt operator or a person exempted by order of the Minister published in the <i>Gazette</i>.</p> <p>An offence is made out regardless of whether the individual had gambled with others or through another person, or whether the gambling was done partly inside and partly outside of Singapore, so long as the gambling would constitute an offence in Singapore if done wholly in Singapore.</p>
Singapore or foreign-based agents of operators of remote gambling services	<p>Carrying out, in accordance with arrangements made by the principal-operator, the following acts:</p> <ul style="list-style-type: none"> organising, managing or supervising remote gambling by others (which includes inviting others to gamble using remote communication, and receiving, accepting or placing bets using remote communication) distributing prizes offered in remote gambling distributing money or money's worth paid or staked by others in remote gambling facilitating the participation by others to gamble remotely assisting in any of the aforementioned acts <p>(collectively, the "Prohibited Acts"), which, as a result, facilitates one or more individuals to commit the offence of gambling using remote communication.</p>
Singapore-based agents of operators of remote gambling services	<p>Carrying out, in accordance with arrangements made by the principal-operator, any of the Prohibited Acts which, as a result, facilitates one or more individuals <i>outside Singapore</i> to gamble using remote communication.</p>

CLIENT UPDATE 2014 SEPTEMBER

GAMBLING LAW

<p>Operators providing outside Singapore a remote gambling service with a Singapore-customer link</p>	<p>Carrying out, in the course of carrying on a business, any of the Prohibited Acts, including the provision of facilities for remote gambling.</p> <p>As regards the provision of facilities for remote gambling, an offence is made out regardless of whether the facilities are provided only partly by means of remote communication, or whether they are provided wholly or partly outside Singapore.</p> <p>A remote gambling service has a Singapore-customer link if <i>any</i> of the customers is physically present in Singapore</p>
<p>Operators providing a Singapore-based remote gambling service with a Singapore or foreign-customer link</p>	<p>Carrying out, in the course of carrying on a business, any of the Prohibited Acts, including the provision of facilities for remote gambling.</p> <p>The provision of the aforementioned remote gambling services amounts to a <i>Singapore-based</i> remote gambling service if the service is provided in the course of carrying on a business in Singapore, or the central management and control of the service is in Singapore, or in the case where the service is provided to customers using an Internet carriage service, where all or any of the relevant Internet content is hosted in Singapore.</p> <p>A remote gambling service has a foreign-customer link if <i>none</i> of the customers is physically present in Singapore, whether or not an individual who is physically present in Singapore is capable of becoming a customer of that service.</p>

Apart from the above offences, other offences provided for under the Bill include the following:

- (a) Publishing or authorising the publication of a remote gambling service advertisement in Singapore. This includes an online advertisement, which will be deemed to have been published in Singapore if the online location where the advertisement has been included has been accessed or is accessible in Singapore;
- (b) Promoting remote gambling in Singapore; and
- (c) Authorising the promotion of remote gambling in Singapore, regardless of whether the authorisation takes place inside or outside Singapore.

Significantly, Section 35(1) of the Bill provides that if the offence by a body corporate is proved to have been committed with the consent or connivance of its officer, or attributable to any neglect on the officer's part, then *both* the officer and the body corporate will be liable for the offence. Where the affairs of the body corporate are managed by its members, these members may be just as liable as if they were directors of the body corporate. Sections 35(3) and 35(4) further provide for the liability of a partner in a partnership, as well the liability of an officer or member of an unincorporated association respectively.

CLIENT UPDATE

2014 SEPTEMBER

GAMBLING LAW

Defences

The Bill provides for a number of defences to various offences, including the following:

- (a) *Offence of providing an overseas remote gambling service with a Singapore-customer link:* Section 10(2) of the Bill provides that it is a defence for the person charged to prove that he did not know that the service had a Singapore-customer link, and could not have known with reasonable diligence. Section 10(3) further elaborates on a cumulative list of requirements which will be considered in determining whether the person charged has exercised reasonable diligence in ascertaining whether its service had a Singapore-customer link.
- (b) *Offence of publishing remote gambling service advertisement:* Section 16(1) of the Bill provides that it is a defence for the person charged to prove that the published advertisement was for or on the direction of an exempt operator. It is also a defence under Section 16(2) for the person charged to establish that the published advertisement was accidental or an incidental accompaniment to the publication of other matters not for the promotion of remote gambling, and that no additional direct or indirect benefit was received by that person for the advertisement. In addition, it is a defence under Section 16(3) that the person was acting in the course of business of delivering/transmitting/broadcasting communications or making data available, and the nature of the business was such that the persons undertaking it have no control over the nature or content of communications/data.
- (c) *Offence of promoting remote gambling:* It is a defence, under Section 18 of the Bill, for the person charged to establish that the promotion was not in the course of business and that the person did not receive any direct or indirect benefit – financial or otherwise – for promoting remote gambling.

Enforcement and other technical measures

The powers of enforcement accorded under the Bill are granted not only to police officers, but also to a public officer or an employee of the Media Development Authority Singapore (“MDA”) or a public authority appointed by the Minister under Section 32 (collectively referred to as ‘authorised officers’ under the Bill). The powers granted to these authorised officers are wide, and include the following:

General powers of enforcement

- (a) An authorised officer may, for the purposes of investigating any offence, or finding out whether the provisions of Part 5 of the Bill or any condition of a certificate of exemption has been or is being contravened, require any person to furnish information and documents and to take copies thereof, require any person within Singapore who appears to be acquainted with the facts and circumstances to be in attendance for questioning, and examine orally that person even before that person or anyone else is charged with an offence, and before that person is called as a witness in any inquiry or trial;

Power to enter and search premises

- (b) The authorised officer may enter without notice any premises owned/occupied by a person reasonably suspected to have committed an offence under the RGA.
- (c) Upon entrance, the authorised officer may, *inter alia*, search the premises and take possession of anything found that is reasonably believed to be connected with the offence, and compel any person to operate equipment to enable the officer to ascertain whether the equipment/storage device contains information relevant to the investigation;

CLIENT UPDATE 2014 SEPTEMBER

GAMBLING LAW

- (d) The authorised officer may also apply for a search warrant in respect of a record/document that is suspected to have not been produced;

Power to direct the blocking of website access

- (e) An authorised officer may direct the MDA to issue the internet service provider (ISP) with an 'access blocking order' where, having considered the matters set out at Section 20(2) of the RGA, he is satisfied that the ISP's services have been or are being used to access or facilitate access to an online location through which remote gambling services are provided, or which contains remote gambling advertising or materials promoting remote gambling, amongst other things;

Power to direct the blocking of payment transactions

- (f) If an authorised officer is satisfied that a person is participating or has participated in unlawful remote gambling activity, he may, having considered the matters set out at Section 21(4) of the RGA, direct the Money Authority of Singapore (MAS) to give a financial institution a payment blocking order, or give the blocking order himself.
- (g) The payment blocking order can go as far as directing the financial institution or financial transaction provider to (i) not accept credit extended to that person; (ii) not accept a cheque, bank draft or similar instrument drawn by or in favour of that person; (iii) not make or accept electronic funds transfers/transmissions to and from that person; and (iv) generally block all payment transactions customarily associated with gambling transactions.

Licensing of Remote Gambling Operators

The requirements for the issuance of a certificate of exemption are highly prohibitive and reflect the conservative approach taken by the Singapore Government to restrict the number of licensed remote gambling operators in Singapore. Section 26(2) provides that the Minister will issue a certificate of exemption to an applicant only if it is in the public interest to do so. The considerations which the Minister may have regard to include the following matters:

- (a) Whether the applicant is established, incorporated, registered or otherwise based in Singapore
- (b) Whether any director/key officer of the applicant has been convicted in Singapore, which renders him unsuitable for being the director/key officer of an exempt operator
- (c) Whether the applicant is a non-profit entity which distributes part of its funds to public, social or charitable purposes in Singapore
- (d) Whether the applicant has a consistent track record of compliance with legal and regulatory requirements, whether in relation to remote gambling or otherwise, in Singapore or elsewhere.

Whilst the third consideration is *prima facie* likely to render most gambling operators (save for the local state operators) unlikely to obtain a certificate, it bears noting that these are merely considerations which the Minister may have regard to and give such weight to as appropriate, and are not cumulative requirements that must strictly be met. The fact that Section 26(4) of the Bill expressly provides that the Minister may take into account such other matters and evidence as may be relevant, suggests that each application will be considered on a case-by-case basis.

Finally, as with all other gaming related licenses, the exempt operator will be subject to certain conditions which may be imposed by the Minister as appropriate, which conditions may include those set out at

CLIENT UPDATE 2014 SEPTEMBER

GAMBLING LAW

Section 28(1) of the Bill. The Minister may also add, delete or modify the conditions of a certificate of exemption issued, and provide directions for the exempt operator to comply with in relation to the conduct, supervision or control of that exempt operator's operations.

Conclusion

Under the CGHA or the BA, which govern terrestrial gaming and betting activities respectively, the key offences would be made out if the gaming or betting activity was conducted in a place to which the public or any class of the public have access, or, if there was no access by the public, where habitual gambling took place. In contrast, offences under the RGA do not have such a requirement of public access to a place where the remote gambling activity is conducted, or a requirement of habitual gaming where there is no such access. The ramifications of such a distinction would mean that an individual would fall afoul of the RGA even if he were to gamble remotely within the private confines of his residence, whereas there would be no contravention of the CGHA or BA if he had engaged in physical gaming or betting activities with friends, colleagues or family members in his home.

The Remote Gambling Bill, when passed, will provide a much needed update to Singapore's gaming laws, given the proliferation of online gaming websites accessible in Singapore over the years. The Bill's broad and extraterritorial coverage, the wide arsenal of enforcement powers, and the strict licensing regime provided under the Bill, reflects the serious intent of the Singapore Government to clamp down on remote gambling activities, which it views as a potent vice and a means by which vulnerable or young persons may be exploited and harmed.

CLIENT UPDATE 2014 SEPTEMBER

GAMBLING LAW

Contacts



Lau Kok Keng
Partner

D (65) 6232 0765
F (65) 6428 2118
kok.keng.lau@rajahtann.com

Cherrin Wong
Associate

D (65) 6232 0781
F (65) 6428 2181
cherrin.wong@rajahtann.com

Please feel free to also contact the Knowledge and Risk Management Group at eOASIS@rajahtann.com

Our regional presence



Our regional contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP
9 Battery Road #25-01
Straits Trading Building
Singapore 049910
T +65 6535 3600 24 HR +65 9690 2253 F +65 6225 9630
www.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office
Vattanac Capital Office Tower, Level 17, No. 66
Preah Monivong Boulevard, Sangkat Wat Phnom
Khan Daun Penh, 12202 Phnom Penh, Cambodia
T +855 23 963 112 / 113 F +855 963 116
kh.rajahtannasia.com
**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**
Unit 1905-1906, Shui On Plaza, 333 Huai Hai Middle Road
Shanghai 200021, People's Republic of China
T +86 21 6120 8818 F +86 21 6120 8820
cn.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited
Office Suite 007, Inya Lake Hotel No. 37, Kaba Aye
Pagoda Road, Mayangone Township, Yangon, Myanmar
T +95 9 73040763 / +95 1 657902 / +95 1 657903
F +95 1 9665537
mm.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia***Assegaf Hamzah & Partners**

Menara Rajawali 16th Floor
 Jalan DR. Ide Anak Agung Gde Agung Lot #5.1
 Kawasan Mega Kuningan, Jakarta 12950, Indonesia
 T +62 21 2555 7800 F +62 21 2555 7899
 www.ahp.co.id

** Assegaf Hamzah & Partners is an independent law firm in Indonesia and a member of the Rajah & Tann Asia network.*

RAJAH & TANN | *Lao PDR***Rajah & Tann (Laos) Sole Co., Ltd.**

Phonexay Village, 23 Singha Road, House Number 046/2
 Unit 4, Saysettha District, Vientiane Capital, Lao PDR
 T +856 21 454 239 F +856 21 285 261
 la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia***Christopher & Lee Ong**

Level 22, Quill 7, No. 9 Jalan Stesen Sentral 5,
 Kuala Lumpur Sentral, 50470 Kuala Lumpur, Malaysia
 T +60 3 2273 1919 F +60 3 2273 8310
 www.christopherleeong.com

**in association with Rajah & Tann Singapore LLP*

RAJAH & TANN | *Thailand***Rajah & Tann (Thailand) Limited**

973 President Tower, 12th Floor, Units 12A-12F
 Ploenchit Road, Lumpini, Pathumwan
 Bangkok 10330, Thailand
 T +66 2 656 1991 F +66 2 656 0833
 th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam***Rajah & Tann LCT Lawyers**

Ho Chi Minh City Office
 Saigon Centre, Level 13, Unit 2&3
 65 Le Loi Boulevard, District 1, HCMC, Vietnam
 T +84 8 3821 2382 / +84 8 3821 2673 F +84 8 3520 8206

Hanoi Office
 Charmvit Tower, Level 20, 117 Tran Duy Hung
 Cau Giay, Hanoi, Vietnam
 T +84 4 6278 2768 F +84 4 6278 2766

Da Nang Office
 Indochina Riverside Tower, Level 3, 74 Bach Dang
 Hai Chau, Da Nang, Vietnam
 T +84 511 3664 662 F +84 511 3664 666
 www.rajahtannlct.com

Rajah & Tann Singapore LLP is the largest law firm in Southeast Asia, with regional offices in China, Lao PDR, Vietnam, Thailand and Myanmar, as well as associate and affiliate offices in Malaysia, Cambodia, Indonesia and the Middle East. Our Asian network also includes regional desks focused on Japan and South Asia. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is firmly committed to the provision of high quality legal services. It places strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or e-mail the Knowledge & Risk Management Group at eOASIS@rajahtann.com.