
CHAMBERS GLOBAL PRACTICE GUIDES

Gaming Law 2023

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Soth Korea: Law & Practice

Hyun Ho Eun, Brian Tae-Hyun Chung and Won Kim
Kim & Chang



SOUTH KOREA



Law and Practice

Contributed by:

Hyun Ho Eun, Brian Tae-Hyun Chung and Won Kim
Kim & Chang

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Contributed by: Hyun Ho Eun, Brian Tae-Hyun Chung and Won Kim, **Kim & Chang**

Kim & Chang has a practice that consists of approximately 30 specialists, including Korean and foreign-licensed attorneys, patent attorneys, tax accountants, and security experts, all with significant expertise in the gaming industry. **Kim & Chang** has the largest practice group dedicated to the laws and regulations affecting the gaming industry in South Korea, and it has handled most of the disputes, regulatory matters, and general corporate matters in the industry. The practice covers the entire spec-

trum of gaming companies' business, including government regulations on the gaming industry, foreign companies' entry into the Korean gaming market, mergers and acquisitions, protection of personal information, tax, patent, and IP-related work, and disputes between gaming companies. Based on such expertise, the gaming practice provides clients with carefully planned, practical, solution-oriented legal services.

Authors



Hyun Ho Eun is an attorney at **Kim & Chang**. His practice encompasses a wide range of industry sectors, with a particular focus on gaming, media and entertainment, and

sports and leisure, in which he is widely considered a leading practitioner. Throughout his career, Mr Eun has acquired extensive experience advising foreign and domestic gaming, media, and entertainment companies on a wide range of legal issues, including regulatory and compliance, transactional and commercial law, fair trade, and antitrust. Mr Eun has represented a broad spectrum of clients in the gaming, entertainment, and media businesses on legal and regulatory issues related to doing business in South Korea.



Brian Tae-Hyun Chung is a foreign attorney at **Kim & Chang**. As a member of the firm's Game, Resort, & Entertainment practice, Mr Chung specialises in the gaming and entertainment

industries. He assists clients in the game and interactive entertainment industries with their compliance with South Korean game regulations, as well as issues arising out of their daily operation in the South Korean gaming market. Mr Chung also works with clients in the traditional entertainment industry, helping them with such matters as production of movies and TV shows in South Korea.

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Won Kim is an attorney at Kim & Chang. He practises primarily in the area of intellectual property, with a focus on patents, trade marks, copyright, and trade secrets. He also has extensive

experience in the IT, entertainment, and gaming industries. Mr Kim represents a wide range of companies in the IT, entertainment, and gaming industries, specialising in regulations, licensing, establishment of new business operations in South Korea, and disputes/litigation.

Kim & Chang

39, Sajik-ro 8-gil
Jongno-gu
Seoul 03170
South Korea

Tel: +82 2 3703 1114
Fax: +82 2 737 9091/9092
Email: lawkim@kimchang.com
Web: www.kimchang.com

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1. Introduction

1.1 Current Outlook and Recent Changes

In March 2023, the National Assembly passed the Game Industry Act Promotion Act (the “Game Industry Act”) amendment bill, which newly defines “loot boxes” and obligates the game developers, distributors, and service providers to indicate the type of loot boxes and information on the odds/probability of obtaining items on their internet homepages or other places. The amended Game Industry Act will take effect on 22 March 2024. More specific details on what information must be disclosed and how they must be disclosed will be determined through future amendment of the Enforcement Decree of the Game Industry Act, a subordinate regulation.

Earlier in December 2020, a more comprehensive Game Industry Act amendment bill was submitted to the National Assembly (the “Amendment Bill”). The Amendment Bill includes new and stricter regulations to protect game users and prevent speculative activities, and also included the above new loot box regulations. However, because of the delay in reviewing the Amendment Bill at the National Assembly, a separate amendment bill focusing on loot boxes had been introduced and passed as described above. Material terms that still remain in the Amendment Bill include the following:

- a domestic agent system that would require overseas game companies to appoint a domestic agent in South Korea in order to facilitate communication with users regarding user protection;
- a general obligation on game companies to not encourage or allow speculative activities using games, which the Ministry of Culture, Sports, and Tourism (MCST) can issue corrective orders against;

- an expansion of the grounds to revoke age ratings given to games, making the games subject to rating revocation illegal games in South Korea;
- a general ban on speculative activities; and
- an increase in the types of regulated advertisements and promotional materials.

Although the key government agencies that regulate the game industry and the National Assembly are currently discussing the Amendment Bill, it may be further updated and revised considering the emergence of new types of games, such as games using the metaverse, blockchain, and cryptocurrency.

2. Jurisdictional Overview

2.1 Online

Under Korean gaming law, whether certain games are permitted, prohibited, or restricted is not specifically determined by the game type or genre, but instead is determined by whether there are speculative activities (ie, can be considered gambling). In general, real-money betting is prohibited, and bingo, casino, lotteries, and fantasy sports are often prohibited because of their speculative elements.

Under the Game Industry Act, a speculative game refers to a game that:

- either:
 - (a) involves betting or allotment; or
 - (b) decides the outcome by coincidence; and
- causes monetary gain and loss.

Furthermore, according to the Act on Special Cases Concerning Regulation and Punishment of Speculative Acts, etc (the “Speculative Acts Regulation Act”), a “speculative act” is “an act

of causing profit or loss of property by collecting property or monetary gain from many persons and determining the profit or loss by coincidental means”.

South Korean court precedents also consider two major factors in determining if a game involves speculative activities:

- whether the outcome is determined by coincidence, and depending on the outcome of the game; and
- whether it is possible to directly obtain monetary gain.

Games with speculative elements are prohibited under the Game Industry Act, the Speculative Acts Regulation Act, and the Korean Criminal Code, and relevant conduct is punishable by imprisonment or a criminal fine.

Therefore, regardless of the type, games will be evaluated on a case-by-case basis for speculative activities, and the Game Rating and Administration Committee (GRAC) may refuse to provide an age rating or cancel a previous rating for the game. Even if there is no element of real-money betting or monetary gain, it is often the case that the game receives an 18+ rating when it is determined to be speculative, such as when it is similar to gambling or includes betting on goods within the game. In addition, as the GRAC tends to determine whether a game is speculative based on stricter standards than those by the courts, games need to be reviewed on a case-by-case basis as they may be subject to rejection of rating on the grounds of their speculative nature.

The GRAC’s age rating categories are as follows:

- for all ages;

- 12+;
- 15+; and
- 18+.

The distribution of games without an age rating is punishable by imprisonment of up to five years, or a fine. Among the games rejected for game ratings, speculative games account for the largest portion.

2.2 Land-Based

General

South Korean gaming laws generally do not differentiate between online gaming and land-based gaming, and the same rules for speculative games apply as those set out in 2.1 Online. There are certain land-based gaming licence requirements for internet cafes (ie, a PC bang, which is a gaming centre in which patrons can play multiplayer games for a fee) and casinos, which are further discussed in 5.1 Premises Licensing.

Sports Betting

Sports betting, which is regulated by the National Sports Promotion Act, is permitted for a number of sports, including domestic and international football, basketball, and golf. Sports betting is only allowed at facilities that are exclusively operated by the Korea Sports Foundation.

3. Legislative Framework

3.1 Key Legislation

The Game Industry Act generally applies to all types of games. The Korean Criminal Code and the Speculative Acts Regulation Act also apply to games with speculative elements.

3.2 Definition of Gambling

As mentioned in 2.1 Online, the Game Industry Act and the Speculative Acts Regulation Act regulate the scope of prohibited games (eg, gambling) for being “speculative” in nature. Furthermore, gambling is punishable under the Korean Criminal Code.

Although the Korean Criminal Code does not provide a specific definition of “gambling”, the Korean Supreme Court has defined “gambling” as an act of achieving monetary gain or loss through the wager of property on a game or activity based on chance; eg, the Supreme Court held that golf betting games constitute gambling, because even if an individual golfer’s skills affect the winning or losing outcome, there is still an element of chance.

The Korean Criminal Code prohibits all forms of gambling and lotteries, and their business operations, with the exception of certain types of permissible betting activities pursuant to separate legal provisions. Therefore, a game with gambling content may be punishable under the Korean Criminal Code as a form of gambling.

3.3 Definition of Land-Based Gambling

See 3.2 Definition of Gambling for a general definition of gambling.

However, casinos and internet cafes require certain licences for operation, as specified in 5.1 Premises Licensing. Under the Tourism Promotion Act, licensed casinos are not allowed to permit the entrance of South Korean nationals, with the exception of a facility in Gangwon Province.

3.4 Definition of Online Gambling

South Korean gaming laws do not differentiate between online gambling and land-based gam-

bling. See 3.2 Definition of Gambling for a general definition.

3.5 Key Offences

Key offences include unlawful gambling and habitual unlawful gambling under the Korean Criminal Code, and unlawful speculative activity under the Speculative Acts Regulation Act.

3.6 Penalties for Unlawful Gambling

Unlawful gambling is generally regulated by the Korean Criminal Code. According to Article 246 of the Korean Criminal Code, unlawful gambling may be punished by a fine not exceeding KRW10 million, and habitual unlawful gambling is subject to imprisonment for not more than three years or a fine not exceeding KRW20 million.

According to Article 30 of the Speculative Acts Regulation Act, the operation of a business with speculative activity without obtaining prior permission (ie, a licence) is punishable by imprisonment with labour for not more than three years or by a fine not exceeding KRW20 million.

3.7 Recent or Forthcoming Legislative Changes

See 1.1 Current Outlook and Recent Changes. In addition, there are ongoing discussions and proposed bills on whether games using blockchain or cryptocurrency technology are subject to gambling regulations.

Generally, the GRAC does not rate any P2E (play-to-earn) games, including blockchain or cryptocurrency games, and has recently revoked ratings for blockchain games on the grounds that blockchain technology enables easy exchange and transactions outside of games, which, in turn, can result in high risks of speculative use. Since game services must be suspended if (i) they do not receive ratings or (ii) their ratings

are revoked, the relevant game companies filed administrative appeal and a petition for stay order against the GRAC for this rating revocation. However, the court sided with the GRAC and confirmed the GRAC's revocation decision on the P2E games that pay winners with NFT (Non-Fungible Tokens) or cryptocurrency.

Notwithstanding the court's decision, there are ongoing discussions on how to regulate P2E games using blockchain or cryptocurrency technology and whether the GRAC's position is appropriate from a policy perspective.

4. Licensing and Regulatory Framework

4.1 Regulatory Authority

The MCST and the GRAC are the key regulatory authorities applicable to the gambling sector.

4.2 Regulatory Approach

The South Korean government adopts a prescriptive approach to regulation. Games that are not permitted, such as speculative games, are set out in advance and specific licences and age ratings are required for gaming business operators to provide or distribute games.

4.3 Recent or Forthcoming Changes

See **1.1 Current Outlook and Recent Changes**. In South Korea, different regulations apply to rating classification and anti-immersion measures depending on game platforms (eg, mobile, PC, or console). As cross-play, which can be played simultaneously on various platforms, has become more common, the MCST has announced its plan to introduce an integrated rating system. While no specific plan has been established yet, a change in the regulatory system remains a possibility.

4.4 Types of Licences

For gaming business operators to provide or distribute games through their own channels, the following licences are required:

- game manufacturer or publisher registration under the Game Industry Act; and
- value-added telecommunications business report under the Telecommunications Business Act (for the online distribution of games).

For in-app purchases or any relevant sales regarding games, an online retailer report is also required.

Age Rating

Games distributed in South Korea are subject to age rating requirements, and must obtain a rating from the GRAC or a self-rating entity (eg, Google or Apple) before release. However, 18+ games must be rated by the GRAC. For games registered with the GRAC, an amendment report on the modification of gaming content is required within 24 hours of the implementation of such changes. After reviewing the changes, the GRAC determines whether a different age rating is required within seven days and notifies the gaming business operator.

4.5 Availability of Licences

Game manufacturer, publisher registration, and value-added telecommunications business report licences are readily available. There is no statutory limit on the number of licences.

While there are no restrictions under the applicable laws and regulations, in practice it is difficult for overseas business operators to obtain certain licences, including game manufacturer and publisher registration licences.

Furthermore, age ratings by the GRAC are scrutinised and determined on a case-by-case basis by the GRAC.

4.6 Duration of Licences

There is no set duration of the licences and the relevant laws are silent regarding an expiry date.

However, as mentioned in 4.4 **Types of Licences**, amendment reports on changes to gaming content must be filed with the GRAC within 24 hours of the change.

4.7 Application Requirements

As mentioned in 4.5 **Availability of Licences**, it is often recommended for overseas gaming business operators to establish a local entity (or a local subsidiary) because, in practice, it is difficult for them to obtain certain licences.

Through a local entity, overseas gaming business operators must obtain a business registration certificate for their gaming services. Either of the following is possible, depending on a gaming business operator's game release schedule:

- companies can obtain the relevant licences and then newly register with those licences and obtain a business registration certificate; or
- companies can first file for a business registration certificate for a different type of business and, after obtaining the licences, file for an amendment to the business registration certificate.

As a separate matter, overseas gaming business operators without a local entity will not have a tax identification number in South Korea.

4.8 Application Timing

The processing period for game manufacturer or publisher registration licences is three days, and for a value-added telecommunications business report licence, the processing period is within three hours on a business day.

The processing period for a business registration certificate is around three days, and around two days for amendments.

4.9 Application Fees

The application fee for a game manufacturer or publisher registration licence is KRW30,000.

There is no application fee for a value-added telecommunications business report licence or a business registration certificate.

4.10 Ongoing Annual Fees

There are no separate annual fees for licences.

5. Land-Based Gambling

5.1 Premises Licensing

Internet Cafes – Venues That Provide Internet Computer Games

Internet cafes – defined as businesses that make gaming products available to the general public with necessary infrastructure, such as computers – are required to register for a licence as a provider of internet computer game facilities.

Casinos

Land-based casinos not located in Jeju Island are subject to the Tourism Promotion Act and the Casino Business Rules of the MCST. However, more than half of the casinos in South Korea are currently located in Jeju Island and a separate Ordinance on Management and Supervision of Casino Business in Jeju applies. These rules and

regulations are much stricter than the rules and regulations for non-Jeju casinos.

For a casino business licence, the casino must be a part of an ancillary facility to a tourist hotel or international conference facility, or a passenger ship of a certain size that travels between South Korea and foreign countries. According to the Ordinance on Management and Supervision of Casino Business in Jeju, casinos in Jeju Island must be at a five-star hotel business facility located in an area where foreign investments are made.

Video Game Arcades

Any business that provides gaming products for public use (including juveniles) with necessary facilities at a certain physical location is required to register for a licence as a juvenile-game-providing business.

Businesses With Speculative Activities

Any business that makes speculative activities available to users needs to meet certain facility requirements – eg, the inside of the facility is not visible from the outside – and receive permission for business operation from the province or city police department.

5.2 Recent or Forthcoming Changes

Due to COVID-19 and concerns over physical gatherings at entertainment-related facilities, casinos in South Korea have argued for the permission to start online betting. The MCST is reviewing such proposals, but currently there are no notable changes or legislative motions.

6. Online Gambling

6.1 B2C Licences

As mentioned in 2.1 Online, in principle, speculative online gambling is prohibited. Therefore, on the premise that the online gambling is not speculative, game manufacturer, publisher registration, and value-added telecommunications business report licences can be considered B2C licences.

6.2 B2B Licences (Suppliers, Software, Etc)

Game manufacturer and publisher registration licences can be considered B2B licences. A game publisher licence is required to distribute any gaming content manufactured overseas, within South Korea.

6.3 Affiliates

There is no specific regulation regarding affiliates.

6.4 White Labels

There are no specific licensing or regulatory requirements regarding the use of white-label providers.

6.5 Recent or Forthcoming Changes

There are no recent or forthcoming changes to online gambling.

6.6 Technical Measures

There are technical measures for unlawful gambling, including IP blocking. The Korea Communications Commission (KCC) is known to block access to non-Korean websites that enable unlawful gambling.

As mentioned in 3.5 Key Offences, unlawful gambling is subject to criminal punishment.

7. Responsible Gambling (RG), Also Known as Safer Gambling (SG)

7.1 RG Requirements

Under the Game Industry Act, gaming business operators, with limited exceptions, are required to take measures to prevent game addiction. Such preventative measures include:

- verification of real name and age at the time of creating an account and identification;
- securing consent from legal guardians, including parents, when juveniles create accounts;
- restrictions on the method of using gaming products and the time of using gaming products upon a request from juveniles or their legal guardians;
- notification to juveniles and their legal guardians of basic matters, including the characteristics, rating and payment policy of game products, and details of their use of gaming products, such as the duration of use and payment information;
- posting warnings to prevent excessive use of gaming products; and
- indicating on the game screen the time a user has spent playing a game.

Gaming business operators are also required to set limits for responsible gambling, including monthly payment limits, to receive age ratings.

7.2 Recent or Forthcoming Changes

There is no applicable information in this jurisdiction.

7.3 Gambling Management Tools

As mentioned in **2.1 Online**, in principle, online gambling with a “speculative” nature is prohibited. See **7.1 RG Requirements** regarding game-

related management tools that do not fall under speculative online gambling.

8. Anti-money Laundering (AML)

8.1 AML Legislation

The Financial Services Commission (FSC) considers illegal gambling and speculative activities as major threats to financing in South Korea. General South Korean AML legislation applies to the gambling sector. The key pieces of AML legislation are:

- the Act on Reporting and Use of Information Concerning Certain Financial Transactions (the “Financial Transactions Reporting Act”, or the FTRA); and
- the Act on Regulation and Punishment of Concealment of Crime Proceeds (the “Proceeds of Crime Act”, or the POCA).

The FTRA regulates money-laundering activities carried out by way of financial transactions by establishing a reporting scheme to enable the analysis of certain information relating to financial transactions.

The Korea Financial Intelligence Unit (KoFIU) was established as the primary national agency responsible for the regulation of AML operations and the control of suspicious transactions in order to effectively implement the AML system. The KoFIU is also responsible for establishing AML policies, the implementation of such policies, and the education of subject entities.

8.2 Recent or Forthcoming Changes

There is no applicable information in this jurisdiction.

8.3 AML Requirements

Obligations under the FTRA apply to casino operators, as well as financial institutions, electronic financial business operators (eg, money transmitters, payment gateway service providers, and issuers of prepaid electronic payment means) and certain loan business operators.

Under the FTRA, the above entities are required to:

- designate persons responsible for the reporting and the establishment of an internal reporting system;
- prepare and implement procedures and work guidelines with which the management and the employees shall comply, while discharging their duties to prevent money laundering and the financing of terrorism; and
- educate and train the management and the employees to prevent money laundering and the financing of terrorism.

There are also reporting requirements under the FTRA and the following cases must be reported without delay to the KoFIU:

- where there are any reasonable grounds to suspect that an asset given or received in relation to a financial transaction is illegal;
- where there are any reasonable grounds to suspect that the other party to a financial transaction engages in money laundering, such as engaging in the financial transaction with a borrowed name;
- where an employee of a financial institution reports to the competent investigative agency under the Act on the Regulation and Punishment of Criminal Proceeds Concealment, for example; and
- where there are any reasonable grounds to suspect that a customer is dividing transac-

tion amounts for the purpose of evading the currency transaction reporting obligation.

The POCA prohibits any person from receiving criminal proceeds or assets that originated from crime proceeds while such person has knowledge of the criminal nature of the proceeds or assets.

Anyone who transacts with a person on the financial transaction prohibited list announced by the FSC without an approval by the FSC may be punished by imprisonment for up to three years or a criminal fine of up to KRW30 million. For violations committed by its representatives, officers, employees or agents during the course of its business, the employer may be held criminally liable and punished with a criminal fine of up to KRW30 million (for anyone who conceals criminal proceeds) or a fine of up to KRW20 million (for anyone who receives criminal proceeds while having knowledge of the criminal nature of the proceeds).

Anyone who conceals criminal proceeds may be subject to imprisonment for up to five years or a criminal fine of up to KRW30 million.

Anyone who receives criminal proceeds while having knowledge of the criminal nature of the proceeds may be subject to imprisonment for up to three years or a criminal fine of up to KRW20 million.

9. Advertising

9.1 Regulatory/Supervisory Agency

The GRAC and the Korea Fair Trade Commission (KFTC) regulate false or misleading advertising.

9.2 Definition of Advertising

The general definition of advertising applies to gaming laws. According to the Fair Labelling and Advertising Act (FLAA), “advertising” means any public distribution or presentation of matters concerning a product through various methods, including newspapers, online newspapers, periodicals, broadcasting, and telecommunication.

9.3 Key Legal, Regulatory and Licensing Provisions

Under the Game Industry Act, all games, with limited exceptions, have disclosure requirements and must indicate their age rating, content information according to descriptors defined by the GRAC (eg, sexuality, violence, language, and gambling), and the name of the game manufacturer or publisher.

The Game Industry Act prohibits certain game-related advertisements and promotional materials regarding age ratings and speculative activities, including advertisements with content that is different from the disclosed information.

9.4 Restrictions on Advertising

The following advertisements or promotional materials are prohibited under the Game Industry Act:

- advertising content of a game that differs from the content of the actually rated gaming product;
- advertising that shows a game rating that differs from the actual game rating of the product;
- advertising disclosing game content information differently; and
- advertising content inducing speculation, such as providing gifts.

Furthermore, the FLAA generally prohibits false, exaggerated, or misleading advertising, and is hence applied to unfair advertisements, such as those in which there is a false indication of the probability of random events in the game.

9.5 Sanctions/Penalties

The MCST may order the removal of the advertisement or promotional materials as a corrective measure. Gaming business operators can be subject to an administrative fine not exceeding KRW10 million for such charges.

If the mechanism of paid loot boxes is advertised differently, the KFTC may raise issues about false, exaggerated or misleading information on the odds or other information and impose a corrective order or an administrative fine.

9.6 Recent or Forthcoming Changes

There is no applicable information in this jurisdiction.

10. Acquisitions and Changes of Control

10.1 Disclosure Requirements

There are no specific disclosure requirements for acquisitions or changes of control of gaming and gambling companies; instead, general rules on merger control in South Korea apply. A company with assets or revenues of KRW300 billion or more, if the assets or revenues of the target company are KRW30 billion or more, is required to file a business combination report to the KFTC. Listed companies are obligated to disclose acquisitions and change of control.

10.2 Change of Corporate Control Triggers

There are no separate change of corporate control triggers for gaming and gambling companies. As mentioned in **10.1 Disclosure Requirements**, general rules apply and change of control triggers would include assets or revenues standards.

10.3 Passive Investors Requirements

There are no passive investor requirements regarding acquisitions or changes of control of gaming and gambling companies.

11. Enforcement

11.1 Powers

Regulatory bodies – as mentioned in **2.1 Online**, **3.5 Key Offences**, and **9.5 Sanctions/Penalties** – can enforce criminal punishment or a fine.

11.2 Sanctions

Under the Game Industry Act, a gaming business operator with a game manufacturer or publisher registration licence may be subject to business suspension (for a period of up to six months) or business closure for several violations, including:

- false registration of a licence or using fraudulent means to register;
- failure to register important licence changes;
- violation of the obligations of gaming business operators under the Game Industry Act (eg, receive education on distribution; do not have, or let others engage in, gambling or other speculative acts using gaming products; do not promote speculation through operating methods, devices, or equipment; and do not permit juvenile use at juvenile-game-providing businesses); and

- the distribution of unlawful speculative games.

11.3 Financial Penalties

Most of the financial penalties under the relevant laws and regulations, including the Game Industry Act and the Criminal Act, are determined within the statutory limits, taking into account the seriousness of the violation and number of violations. On the other hand, administrative fines may be imposed in case of violation of specific laws such as the Fair Trade Law, the Fair Labelling and Advertising Act, or the E-Commerce Act, which are calculated by multiplying a certain percentage of the revenue related to the violation. The KFTC has a history of imposing administrative fines for unfair business practices, including false or misleading advertising.

11.4 Personal Sanctions

In principle, game-related sanctions (eg, sanctions for failure to obtain a licence or a violation of game-related regulations) are imposed on gaming business operators.

However, if an individual violates the law while operating the gaming business on their own (eg, individual business operator), a sanction may be imposed on that individual. In addition, some laws, such as the Game Industry Act and the Fair Trade Law, allow punishment to be imposed on an individual who has been actively involved in a corporation's violation of laws (eg, relevant officers or employees).

On the other hand, it is rare for personal licensees of a game to be subject to sanctions even if the game is in violation of the relevant laws. For example, even if a business operator does not obtain a licence or game rating necessary for the game business, a personal licensee's use of the relevant game would not be subject to sanc-

tions. However, there is an exception in the case of unlawful gambling games, as users of such games may be subject to punishment along with the operator of gambling games (see 3.6 Penalties for Unlawful Gambling).

12. Tax

12.1 Tax Rate by Sector

There are no separate tax rates for gambling, and the general corporate income tax in South Korea will apply.

For reference, casinos licensed under the Tourism Promotion Act are required to make payments to promotional funds for tourism.

13. Anticipated Reform

13.1 Anticipated Reform

See 1.1 Current Outlook and Recent Changes.

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