

Gaming

# Myanmar Passes Gambling Law 2019 to Update its Gambling Regulatory Regime, but Many Questions Remain

## Introduction

On 7 May 2019, Myanmar enacted the Gambling Law 2019 (“**GL 2019**”), which supersedes and repeals the old Gambling Law 1986 (“**GL 1986**”). The GL 2019 introduces significant amendments to the existing regime, with the stated aim of modernising Myanmar’s gambling law. However, the most ground-breaking change is the introduction of legalised casino gambling in Myanmar. Such a change is expected to increase tourism to the country, increase revenue generation for the State, stimulate the local economy, and create jobs for local Myanmar nationals.

## Key Feature of the New Law

The GL 2019 preserves most aspects of the GL 1986, while introducing several changes and new features. Like the GL 1986, the GL 2019 outlaws terrestrial gambling generally, and empowers authorities to arrest persons involved in gambling without a warrant, and to enter into, search and make arrests in a place that is credibly suspected to be a gambling house. The offences prescribed in the GL 1986 are largely unchanged in the GL 2019. Under both Acts, it is an offence for any person in a public area to collect bets for gambling, to gamble, organise or promote gambling at any game or training or to gamble, organise or promote animal sports betting. It is also an offence for a person to gamble or be present in a gambling house, and to open, establish, operate or support a gambling house or to use or authorise various terrestrial venues such as a building, room or vehicle to open or establish a gambling house. Persons are also prohibited from operating, receiving bets, acting as a bookie, obtaining monetary interest or supporting lotteries, games of chance or casinos in any way.

The first key new feature enacted in the GL 2019 is the treatment of casino operations in Myanmar. Prior to the enactment of the GL 2019, casinos operations in Myanmar were very limited. Under Notification No. 1/2013 of the Myanmar Investment Commission, the Ministry of Home Affairs granted casinos permission to operate in hotels located in restricted areas. Only foreign nationalities were allowed to patronise such casinos. There were also casino businesses operating illegally in some border areas and self-administered zones such as Tha Htay Kyun, Myawaddy, Wa and Kokant.

Under the GL 2019, the Union Government may grant conditional permission for casinos to be operated in a place or building, in which foreigners but not Myanmar citizens may gamble. However, the GL 2019 is silent on the requirements for applying for such permission, including whether Myanmar citizens or entities will be permitted to operate the casino business, whether foreign entities wishing to do so are



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## 2019 SEPTEMBER

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### Gaming

required to partner with a Myanmar entity, the paid-up capital required, duration of the licence to operate, etc. We anticipate that the Government will issue rules, regulations and notifications to deal with these issues in the near future.

Secondly, the GL 2019 empowers the Internal Revenue Department under the Ministry of Planning and Finance (“IRD”) to administer a public lottery, the Aung Bar Lay lottery. While this lottery was first introduced in 1938 under British rule, it had not been expressly provided for in any legislation until the GL 2019. This amendment appears to merely codify existing practice, and significant changes to the conduct of the lottery are not envisioned.

Thirdly, the GL 2019 drastically increases the financial rewards available for informants who provide information to the authorities on illegal gambling activities. Under the previous GL 1986, informers would be guaranteed to receive MMK 500 (~USD0.33), with any additional rewards being awarded at the court’s discretion. Under the GL 2019, it is stipulated that informants and persons involved in the arrest of persons engaged in illegal gambling activities will receive 10% and 20% of money from the gambling activities confiscated as money or from the sale of objects confiscated as public property respectively.

Finally, the GL 2019 also significantly increases the financial penalties for those convicted of offences by a factor of 100 times for most offences. Both the increase in financial rewards for whistleblowing and financial penalties for offences suggest that the Government is taking a firmer approach to clamping down on illegal gambling activities in Myanmar.

### Areas Which Require Further Clarity

The GL 2019 as it currently stands is broadly worded, and imprecise in various aspects. While this may accord the Government more flexibility to deal with developments in illegal gambling, e.g. online gambling, this may result in uncertainty for businesses and persons who wish to participate in gambling activities or invest in the gambling industry in Myanmar.

For instance, the GL 2019 defines the term “*gambling*” to mean “*a game of chance and, irrespective of whether a bookmaker’s fee is paid or not, gambling by taking part in games that require skills for money, for property with a monetary value or for property agreed to be exchanged for a certain amount of money.*” The definition is largely unchanged from the GL 1986, save for the addition of the underlined words. With this addition, the Government appears to be clarifying that if an individual takes part in games that require skills for money, for property with a monetary value or for property agreed to be exchanged for a certain amount of money (collectively “**Money or Money’s Worth**”), and gambles while doing so, it is irrelevant that the individual does not do so through a bookmaker.

However, this amendment still does not address the various issues with the definition of “*gambling*” which are arguably more significant. For example, by defining gambling to include gambling by taking part in games that require skills for Money or Money’s Worth, the law appears to criminalise the sporting activities of professional sportsmen such as billiards and basketball players. While it might be submitted

### Gaming

that these sportsmen would only be deemed to be gambling if they place bets on the games in which they participate, the classification of the participation in “*games that require skills*” as gambling if done for the sake of money does cast doubts on the legality of professional sports in the country. Secondly, it is unclear whether games of mixed chance and skill, such as poker and bridge, would be treated as games of chance, or games that require skills. While the approach in many Commonwealth jurisdictions such as Singapore, Australia and the UK is to classify games of mixed chance and skill as games of chance, the wording of the GL 2019 suggests that games of mixed chance and skill would fall within “*games that require skills*” instead. Finally, it is somewhat odd that gambling is defined as a *game* of chance, rather than *the playing of a game* of chance, especially since the other activity defined to be gambling is “*taking part in games that require skills for money*”.

The term “gambling house” is defined in the GL 2019 as “*a house, building, partitioned place, compound, yard, room or vehicle used for gambling. This term does not include a casino opened with the permission of the Union Government.*” This is unchanged from the GL 1986, except for the underlined words which allow for the operation of legalised casinos in Myanmar. The definition of gambling house sets out a list of exhaustive terrestrial locations which may be used as a gambling house, but does not deal at all with virtual or online locations. Similarly, the definition of casino, *viz. “a place or building registered according to the permission of the Union Government with specified terms where only foreigners may gamble”* suggests that the term only applies to terrestrial casinos. Accordingly, while sections 10 and 11 of the GL 2019 prohibit the establishment and operation of gambling houses, casinos and lotteries without permission, these appear to only apply to land-based gambling houses and casinos, and not to remote gambling websites, mobile applications and other digital platforms. In other words, the GL 2019 does not appear to have a specific mechanism to target remote gambling operators and their customers. Given the growing ubiquity of personal computers and mobile phones, remote gambling would appear to a greater threat than terrestrial gambling operations. The GL 2019, which is intended to modernise Myanmar’s gambling law, should perhaps address the fastest-growing segment of the gambling industry.

Section 14 of the GL 2019 states that “*No one shall lend or support financially for gambling*”, and remains unchanged from the GL 1986. There are no qualifications to address whether such a prohibition applies to the licensed casinos in Myanmar who wish to extend credit lines to foreign nationals to gamble legally with them, or to financial institutions lending money to foreign nationals to gamble with such casinos. If the latter is meant to be prohibited, it is unclear whether this provision is meant to have extra-territorial effect to apply to foreign financial institutions who lend money to foreign nationals in Myanmar to gamble.

Finally, section 9 of the GL 2019, which is unchanged from the GL 1986, states as follows:

- “*No one shall –*  
(a) *gamble or*  
(b) *be present in a gambling house.*”

Section 9(a), which prohibits any person from gambling, appears to be a strict and absolute prohibition, without any qualifiers such as “*without permission*”, unlike section 11. In light of the legalisation of casino

## Gaming

and lottery gambling in Myanmar, one could argue that section 9 has to be interpreted to read as “*no one shall gamble in a gambling house, or no one shall be present in a gambling house*”.

Consequently, it would appear that no offence would be committed if a Myanmar citizen takes part in illegal online gambling, since the definition of gambling house only covers terrestrial gambling locations, unless the physical place where he happens to be in when engaged in online gambling is to be deemed *the* gambling house.

## Conclusion

As highlighted above, there are issues surrounding the GL 2019 that would require clarifications from the Government. Some of the issues that require immediate attention include what constitutes gambling and being present in a gambling house, as well as whether Myanmar nationals may gamble remotely. Beyond examining any new rules, regulations and notifications that may be issued by the Government in the future, it will also be important to monitor the approach taken by the Myanmar government in enforcing the GL 2019. We will continue to watch the developments in this space, and will provide further updates in due course.

For further queries, please feel free to contact our team below.

Gaming

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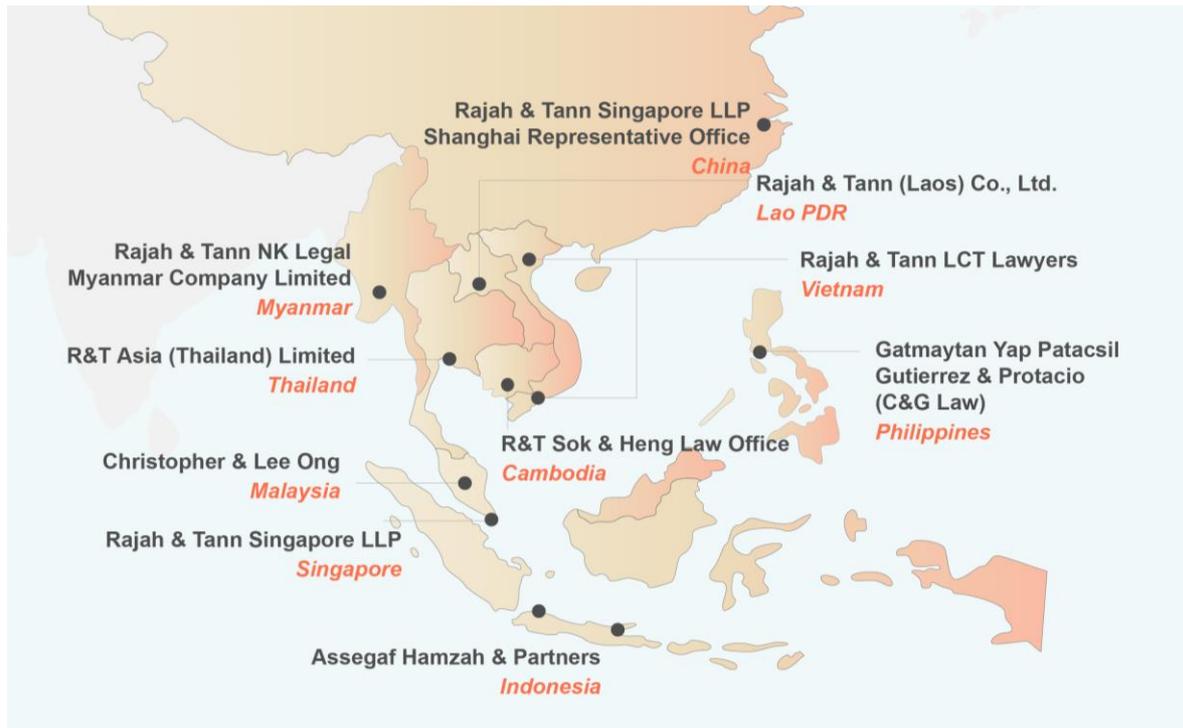
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