

Penghu vote key to unlocking Taiwan casino industry



Voters on the island of Penghu will go to the polls on Saturday in a referendum crucial to the future of casino gaming in Taiwan.

Under the Offshore Islands Development Act, Taiwan's offshore islands can create tourist areas that include casino zones if the island's residents approve by a simple majority vote in a county-wide referendum.

To date only Matsu has approved casinos in a referendum. A prior poll on Penghu in 2009 failed, due mainly to pressure from anti-gaming groups, an anti-gaming "get out the vote" campaign – and the absence of draft casino gaming legislation which would have addressed the concerns raised by the anti-gaming groups.

The latest referendum, which has previously enjoyed some support from the Democratic Progressive Party (DPP) government in Penghu, is opposed by the usual anti-gaming forces, including DPP headquarters in Taipei. While the numerical result of the Penghu referendum is uncertain – with most observers saying it is too close to call, even a week ahead of the vote – the potential implications for the future of casino gaming in Taiwan are pretty clear.

Political opposition

If the referendum fails, it is unlikely that Taiwan's Legislative Yuan (LY) will pass the Tourism Casino Administration Act, the casino gaming regulatory act which has been pending in the LY since 2013. The

LY was unwilling to pass the legislation in the wake of the successful casino gaming referendum in Matsu in 2012, when both the Executive Yuan (EY) and the LY were dominated by the Kuomintang (KMT), a party which has historically been favorably disposed to the development of casino gaming in Taiwan's offshore islands.

Given the DPP's statements opposing the 2016 referendum, it is even more unlikely that a DPP-dominated EY and LY would pass the Act if Matsu remained the only offshore island to hold a successful gaming referendum.

If this latest referendum passes, then the DPP national government will have to determine whether or not it chooses to support the will of the people, as decided by referendum, in a DPP-governed county. While there is no certainty that this factor alone would motivate the DPP government to pass the Act, the government would have to make its intentions on the issue clear, since two of the three largest offshore islands will have passed casino gaming referenda. In other words, while the LY was not willing to pass the Act for the sake of Matsu alone, the LY might be more inclined to pass the Act if a majority of the eligible offshore islands have held successful referenda.

Onerous terms

It is not enough, however, merely to pass the Act; it must pass in a form which would encourage reputable foreign casino operators to bid on licenses. Unfortunately, this is not a certainty, as the DPP has previously proposed amendments to the Act which would likely make the Act, and the regulatory regime established under the Act, unpalatable to many potential foreign investors.

Among those are amendments which would: a) shorten the license term from 30 years to 15 years; b) impose a minimum NT\$60 billion (approximately US\$2 billion) capital requirement on licensees; c) impose taxation in the amount of up to 62 percent of gross gaming revenue, on top of a 17 percent tax on net income; and d) impose a limit of two licenses per island. If these proposed amendments are incorporated into the draft Act, it is unlikely that Taiwan's casino zones will be attractive to many potential foreign investors, notwithstanding a successful Penghu referendum.

So, even though the numerical results of the Penghu referendum will not be known for a few days, the ultimate result of the referendum is likely to be a clear roadmap for whether or not casino gaming will be permitted on Taiwan's offshore islands under the current government. Further, in the event that Penghu passes its referendum, and a policy decision is made to pass the Act, it will be up to foreign casino gaming operators to determine whether or not Penghu is a venue of interest and, if so, whether or not the final version of the Act as passed will create an acceptable operating environment. At the moment, though, the initial decision rests with the people of Penghu.

*Bill Bryson of Global Market Advisors has practiced law in New York and Taipei for over 25 years, and is recognized as a leading lawyer in the fields of gaming, hospitality, real estate development, mergers and acquisitions and financial transactions.