



THE PROBLEMS OF THE LEGALITY OF BLIND BOXES UNDER THE
GAMBLING ACT B.E. 2478 (1935)

BY

TUNRADA WIANGKET

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS IN BUSINESS LAWS (ENGLISH PROGRAM)
FACULTY OF LAW
THAMMASAT UNIVERSITY
ACADEMIC YEAR 2023

THE PROBLEMS OF THE LEGALITY OF BLIND BOXES UNDER THE
GAMBLING ACT B.E. 2478 (1935)

BY

TUNRADA WIANGKET



A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS IN BUSINESS LAWS (ENGLISH PROGRAM)
FACULTY OF LAW
THAMMASAT UNIVERSITY
ACADEMIC YEAR 2023

THAMMASAT UNIVERSITY

FACULTY OF LAW

THESIS

BY

TUNRADA WIANGKET

ENTITLED

THE PROBLEMS OF THE LEGALITY OF BLIND BOXES
UNDER THE GAMBLING ACT B.E. 2478 (1935)

was approved as partial fulfillment of the requirements for
the degree of Master of Laws in Business Laws (English Program)

on July 27, 2024

Chairman



(Professor Dr. Kanaphon Chanhom)

Member and Advisor



(Assistant Professor Dr. Ronnakorn Bunmee)

Member



(Assistant Professor Dr. Lasse Schuldt)

Dean



(Associate Professor Dr. Pokpong Srisanit)

Thesis Title	THE PROBLEMS OF THE LEGALITY OF BLIND BOXES UNDER THE GAMBLING ACT B.E. 2478 (1935)
Author	Tunrada Wiangket
Degree	Master of Laws
Major Field/Faculty/University	Business of Laws (English Program) Faculty of Law Thammasat University
Thesis Advisor	Assistant Professor Dr. Ronnakorn Bunmee
Academic Year	2023

ABSTRACT

This thesis investigates the legal status of blind boxes in Thailand under the Gambling Act B.E. 2478 (1935). The research focuses on two key questions: how are blind boxes currently classified within the Act, and is the existing legislation sufficient to effectively regulate the blind box market? To gain a broader perspective, the thesis conducts a comparative analysis of legal frameworks in the United Kingdom, Belgium, Japan, and China.

This analysis explores how these countries regulate blind boxes and the control measures they utilize. The research finds that certain types of blind boxes in Thailand can be considered gambling under the Act. Specifically, blind boxes that introduce an element of chance, like a game involves winning and losing, are similar to “soft games of chance” defined in Section 4 Paragraph 2. These types of blind boxes require a license to operate. Additionally, prize blind boxes, where purchase offers a chance to win prizes, are considered “arrangements for premium gifts or prizes by means of taking a chance” under Section 8 and also necessitate licensing.

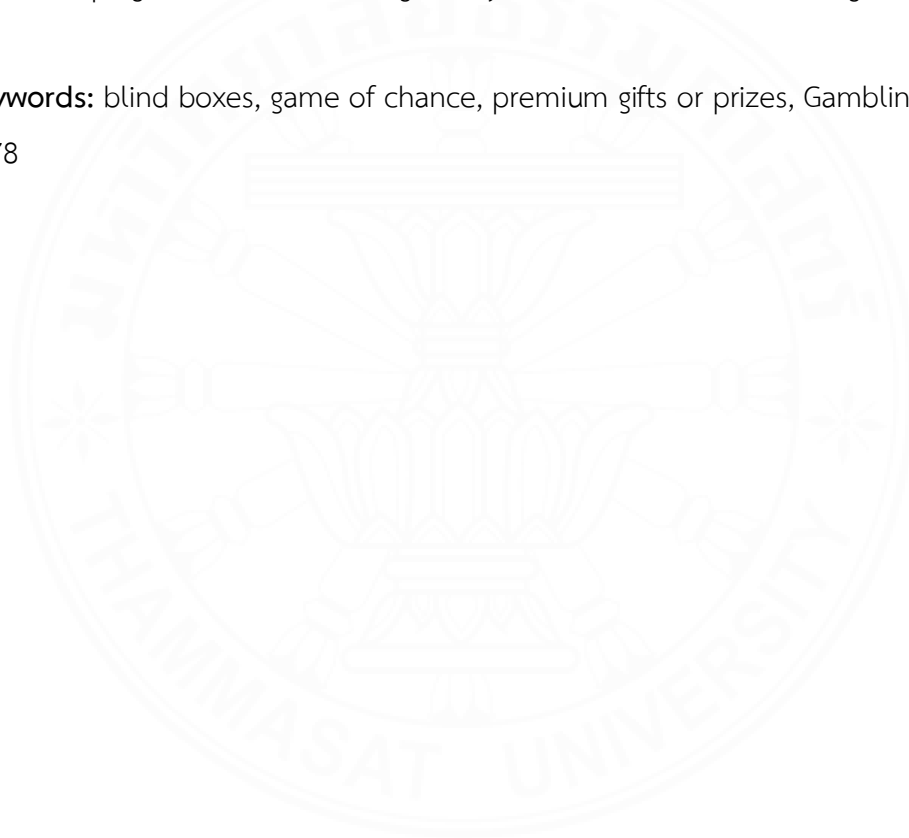
However, the thesis argues that the current Gambling Act, while encompassing some aspects of blind boxes, has limitations in effectively regulating the entire market. These limitations include the absence of specific regulations tailored for blind boxes, limited control measures to address concern and challenges with the

geographically-based licensing system due to the online availability of blind boxes. Based on the comparative analysis, the thesis proposes potential solutions, such as introducing specific regulations for blind boxes within the Gambling Act framework.

The research suggests implementing control measures inspired by other countries, such as price caps, transparency requirements regarding item distribution and value ranges. This research aims to contribute to a clearer understanding of the legal status of blind boxes in Thailand and provide policymakers with valuable insights for developing a more effective regulatory framework for this evolving market.

Keywords: blind boxes, game of chance, premium gifts or prizes, Gambling Act B.E.

2478



ACKNOWLEDGEMENTS

First and foremost, I would like to express my sincere gratitude to my thesis supervisor, Assistant Professor Dr. Ronnakorn Bunmee, for his invaluable guidance, support, and encouragement throughout this research journey. I would also like to thank my committee members, Assistant Professor Dr. Lasse Schuldt and Professor Dr. Kanaphon Chanhom, for their insightful feedback and suggestions during the development of this thesis. Furthermore, I am grateful to staffs at International LL.M. Program in Business Law for providing me with the resources and support necessary to complete this research. I am incredibly thankful to my boss and partner in crime, Dr. Kunacha Chaichumporn, for his understanding, flexibility, and support throughout my studies. I am incredibly fortunate to have him throughout this journey.

My deepest gratitude extends to my family and friends, especially Thitaporn Techaphutvorakun, for their unwavering support and encouragement throughout my studies. Their understanding has helped me persevere during challenging times.

I would also like to express my sincere appreciation to the officers and friends at the Bangkok Remand Prison. Their kindness and camaraderie during my time there were a source of immense comfort and support.

This research would not have been possible without the contributions of all the aforementioned individuals and institutions. Thank you.

Tunrada Wiangket

TABLE OF CONTENTS

	Page
ABSTRACT	(1)
ACKNOWLEDGEMENTS	(3)
LIST OF ABBREVIATIONS	(10)
CHAPTER 1 INTRODUCTION	1
1.1 Background and Problems	1
1.2 Research Questions	2
1.3 Hypothesis	2
1.4 Objectives of the Study	2
1.5 Scope of the Study	2
1.6 Methodology	3
1.7 Expected Results	3
CHAPTER 2 GENERAL CONCEPT AND RELATED LEGAL PRINCIPALS	4
2.1 Origin and Conditions of the Problems	4
2.1.1 Definition of Blind Box	4
2.1.2 Overview of the Current Blind Box Industry	6
2.1.3 Evolution of Blind Box	8
2.1.3.1 Product Blind Boxes	11
(1) Loot boxes	11
2.1.3.2 Prize Blind Boxes	11
2.1.4 Retail Landscape	12
2.1.4.1 Physical Stores	12

(1) Retail Stores	12
(2) Vending Machines	13
2.1.4.2 Online Stores	13
(1) Social Media	13
(2) E-commerce Platforms	14
(3) In-Game Purchase	15
2.1.5 Concerns and Potential Risks of Blind Boxes	16
2.1.5.1 Legality of Blind Boxes	16
2.1.5.2 Normalization of Gambling (Gamblification)	17
2.1.5.3 Risk of Addiction	18
2.2 Legal Framework	19
2.2.1 Gambling Law	20
2.2.1.1 The Concept, Origins, and Objectives of State Control Related to Gambling Laws: The Dangers of Unregulated Gambling	20
(1) Gambling as a Personal Right	21
(2) Gambling as a Potential Social Problem	22
(3) Gambling as a Moral Issue	22
2.2.1.2 Gambling Definitions and Characteristics	22
(1) Definitions	22
(2) “Games of Chance” and “Gambling”	25
(3) Gambling as a Leisure Activity	27
(4) Characteristics of Gambling Offenses	27
CHAPTER 3 FOREIGN LAWS	30
3.1 Legality of Blind Box	30
3.1.1 Gambling Law	30
3.1.1.1 United Kingdom	30
3.1.1.2 Belgium	35
(1) Definition	36

3.1.1.3 Japan	37
3.1.1.4 People's Republic of China	40
(1) Two-Way Money Flow:	42
(2) Mechanisms for Winning:	42
(3) Disguised Transactions:	42
(4) Financial Thresholds:	42
3.1.2 Legality of Blind Box	43
3.1.2.1 The United Kingdom	43
3.1.2.2 Belgium	45
(1) Game	45
(2) Wager (Bet)	46
(3) Chance of Wins and Losses	47
(4) Luck	47
3.1.2.3 Japan	48
(1) Consumer Protection Law	49
(2) Act against Unjustifiable Premiums and Misleading Representations (APM Law)	50
3.1.2.4 People's Republic of China	52
3.2 Control Measures	53
3.2.1 The United Kingdom	53
3.2.2 Belgium	53
3.2.3 Japan	55
3.2.3.1 Prohibition of "Kompu Gacha" Mechanisms by the National Consumer Affairs Agency (CAA)	55
3.2.3.2 Self-Regulation by Private Sector	56
(1) Addressing Transparency Concerns	56
(2) Combating Real-Money Trading	57
(3) Banning Similar Mechanics	57
(4) Establishing an Industry Committee	57
3.2.4 People's Republic of China	58
3.2.4.1 Product Restrictions	59

3.2.4.2 Transparency and Fairness	60
3.2.4.3 Harm Minimization	61
3.2.4.4 Age Restrictions and Parental Consent	61
3.3 Regulatory Agencies	62
3.3.1 The United Kingdom	62
3.3.1.1 The U.K. Gambling Commission	62
3.3.2 Belgium	63
3.3.2.1 Belgian Gaming Commission	63
(1) Advisory Role	63
(2) Licensing Authority	63
(3) Regulatory Oversight	63
(4) Federal Public Service “FPS” Finance - Gaming and Betting Department	64
(5) Supreme Court of Cassation, Public Prosecutor’s Office, and Federal Police	64
(6) Financial Intelligence Processing Unit (CFI)	64
3.3.3 Japan	65
3.3.3.1 The National Consumer Affairs Agency (CAA)	65
3.3.3.2 Private Sector	65
3.3.4 People’s Republic of China	66
3.3.4.1 Shanghai Municipal Administration for Market Regulation (SMAMR)	66
CHAPTER 4 THAI GAMBLING LAWS	67
4.1 Legality of Gambling in Thailand	67
4.1.1 The Gambling Act B.E. 2478 (1935)	67
4.1.1.1 The Royal Institute Dictionary (2542)	68
4.1.1.2 Characteristics of Gambling in the Gambling Act B.E. 2478	68
4.1.1.3 Supreme Court’s Interpretation	68

4.1.1.4 Definition by the Council of State	68
4.1.1.5 Definitions from Legal Scholars	69
4.1.2 Categorizing Gambling Activities in Thailand	70
4.1.2.1 List A:	70
4.1.2.2 List B:	71
4.1.3 Penalties for Violating the Gambling Act B.E. 2478 (1935)	73
and Enforcement	
4.1.4 Unforeseen Gambling Activities	75
4.1.5 Premium Gifts or Prizes	75
4.1.6 License Management	75
4.1.7 Taxation	76
4.2 Legality of Blind Box Under Gambling Act B.E. 2478 (1935)	77
4.2.1 Blind Box Under the Definition of Gambling in the Gambling Laws	80
4.2.2 Blind Box Under the Premium Gifts or Prizes	83
4.3 Control Measures	87
4.3.1 Legal Licensing System for Gambling	87
4.3.1.1 The Procedures and Time Frame for Considering Applications for Gambling Licenses	88
4.3.1.2 Control of Days and Times Permitted for Gambling	90
(1) Gambling on Animal Fights or Race	90
(2) Gambling Permitted at Charity Events	91
4.3.1.3 Control by Determining the Age of Players	91
4.3.1.4 Control by Regulating Fee	91
4.3.2 Legal Licensing for Premium Gifts or Prizes	92
4.3.3 Other Related Measures	94
4.4 Regulatory Agencies	95
4.4.1 Department of Provincial Administration, Ministry of Interior (Licensing Authority)	95
CHAPTER 5 COMPARATIVE ANALYSIS	97

5.1 The Comparative Analysis of Gambling Laws	97
5.2 The Comparative Analysis of the Legality of Blind Box	100
5.3 The Comparative Analysis of the Control Measure	104
5.4 The Comparative Analysis of the Regulatory Agencies	106
 CHAPTER 6 CONCLUSION AND RECOMMENDATION	 108
6.1 Conclusion	108
6.1.1 Conclusion on the Gambling Act of Thailand as a Solution of Blind Box Issue	108
6.1.2 Conclusion on Legality of Each Type of Blind Box Under the Gambling Act B.E. 2478 (1935)	109
6.1.3 Conclusion of Control Measure	110
6.1.4 Conclusion of Regulatory Agency	112
6.2 Recommendation on Licensing Application	112
 REFERENCES	 115
 BIOGRAPHY	 125

LIST OF ABBREVIATIONS

Symbols/Abbreviations	Terms
APM	The Act against Unjustifiable Premiums and Misleading Representations
CAA	The National Consumer Affairs Agency
CESA	Computer Entertainment Supplier's Association
DES	The Ministry of Digital Economy and Society
JASGA	Japan Social Game Association
MTG	Magic: The Gathering
PCT	Technology Crime Suppression Division
SMAMR	The Shanghai Municipal Administration for Market Regulation

CHAPTER 1

INTRODUCTION

1.1 Background and Problems

Blind boxes, opaque containers with surprise contents, have become a hot trend in Thailand. Fueled by the excitement of the unknown and the potential for rare finds, these products have captivated Thai consumers. Their popularity is driven by the country's growing online shopping culture, facilitated by social media, and the success of established brands and online sellers actively promoting them. The success of Pop Mart, a leading blind box retailer, with its first physical store in Thailand exemplifies this trend. Their widespread availability in stores and online platforms reflects significant profits for businesses across various sectors.

The rise of blind boxes has clashed with existing Thai laws. Critics argue that the element of chance involved in winning valuable prizes makes them akin to gambling, potentially violating the Gambling Act B.E. 2478 (1935). This ambiguity creates a legal grey area. The true nature of blind boxes remains uncertain in the eyes of the law, leaving them in a state of legal limbo.

This study explores this ambiguity by examining the definition and current state of the blind box industry in Thailand. The analysis then transcends national borders, providing a comparative overview of foreign regulations in the United Kingdom, Belgium, Japan, and China. This international perspective sheds light on different approaches to regulating similar practices. For Thailand, the article examines the potential application of existing gambling laws, particularly the Gambling Act B.E. 2478 (1935), to regulate blind boxes. The lack of specific regulations for blind boxes in Thailand is highlighted, alongside the possibility of using existing legal frameworks, including licensing, to manage them. This study concludes by emphasizing the need for further clarity in the legal landscape surrounding blind boxes in Thailand, particularly the potential to utilize existing control measures outlined under the Gambling Act B.E. 2478 (1935).

1.2 Research Questions

The research questions of this thesis can be settled as follows: “Are certain types of blind boxes considered gambling under existing Thai laws? How are blind boxes currently classified within Thailand’s Gambling Act? Is the current Thai Gambling Act sufficient to handle the challenges posed by blind boxes?”.

1.3 Hypothesis

Due to the element of chance and potential for addiction associated with blind boxes, some of them likely fall under the forms of gambling as outlined in the Gambling Act B.E. 2478 (1935) of Thailand. However, the current lack of specific regulations for blind boxes creates legal ambiguity, potentially allowing for their continued sale despite potential legal violations. Enhancing the current licensing system under Thailand’s Gambling Act B.E. 2478 (1935) could effectively regulate blind boxes.

1.4 Objectives of the Study

- 1.4.1. To study and analyze the legal principle relate to Gambling Act
- 1.4.2 To identify relevant legal statutes, and regulations that directly address blind boxes and analyze how existing legal frameworks handle them.
- 1.4.3 To study the legal measure for blind boxes in foreign countries
- 1.4.4 To propose a solution to regulate blind boxes under the Gambling Act of Thailand.

1.5 Scope of the Study

This study aims to conduct a comparative analysis of the laws pertaining to blind boxes in Thailand with those in selected foreign countries, focusing on regulations related to gambling. The specific countries to be examined include the

United Kingdom, Belgium, Japan, and China. The objective is to identify appropriate legal measures that align with established legal framework of gambling law which can be effectively applied to control blind boxes in Thailand.

1.6 Methodology

This study will employ a doctrinal legal research method, utilizing a comparative analysis approach. Data will be collected from a diverse range of Thai and international sources, including academic journals, legal documents, government publications, and reputable online information. These sources will encompass legal principles, scholarly articles, theses, and other relevant materials on blind boxes. This comprehensive approach aims to identify and analyze the legal issues surrounding blind boxes in Thailand by comparing them to regulations and legal frameworks in other jurisdictions.

1.7 Expected Results

1.7.1 To understand the fundamental legal principal relating to the justifications for limiting rights and freedoms and the general concept of the gambling law.

1.7.2 To understand the gambling laws of Thailand and foreign countries including United Kingdom, Belgium, Japan, and China, along with other law or regulation related to the problems of blind boxes.

1.7.3 To understand the problems of legality of blind boxes under Thai gambling law.

1.7.4 To demonstrate legal approaches for controlling the sale of blind boxes by using the existing licensing measure under Gambling Act.

CHAPTER 2

GENERAL CONCEPT AND RELATED LEGAL PRINCIPALS

This chapter establishes a critical foundation for a comprehensive analysis of blind boxes. It delves into the origins and current state of the blind box phenomenon, followed by a critical examination of associated risks. Then, the chapter analyzes the legal framework surrounding blind boxes, encompassing both general principles and specific laws governing the industry. This foundational knowledge will be crucial for subsequent chapters that delve deeper into the complex landscape of blind boxes.

2.1 Origin and Conditions of the Problems

To understand the potential problems surrounding blind boxes, this section delves into their core aspects. First, a precise definition establishes a clear understanding of what constitutes a blind box. Next, a comprehensive overview of the current industry landscape explores the evolution of the concept, tracing its rise in popularity and examining the diverse types of blind boxes available in the expansive retail environment. Finally, the section identifies potential issues for further analysis, including concerns about the normalization of gambling behavior, the risk of addiction associated with the thrill of the unknown

2.1.1 Definition of Blind Box

The term “blind box” has its origin from the Chinese word “盲盒” (máng hé).¹ The word “盲” (máng) directly translates to “blind” or “uninformed,” while “盒” (hé) means “box” or “case.” This literal translation perfectly captures the essence of the blind box concept – a container whose contents remain a mystery to

¹ Leon Y. Xiao, ‘Blind Boxes: Opening Our Eyes to the Challenging Regulation of Gambling-Like Products and Gamblification and Unexplained Regulatory Inaction’ (2022) 5 Gaming Law Review 255-268 <<https://www.liebertpub.com/doi/10.1089/glr2.2022.0012>> accessed 28 March 2024.

the buyer until it's opened. The blind box trend first gained widespread popularity in China, particularly within the toy and collectible industry. This sales model builds upon inherent human curiosity, creating a sense of surprise and anticipation for the buyer. It taps into the Chinese concept of “Chai Jingxi” (拆惊喜), which refers to the joy of unwrapping surprises. Additionally, the element of uncertainty and the potential for a rare or desirable item adds a thrilling, risk-taking element to the purchase. Due to the global influence of the blind box trend, the Chinese term “盲盒” (máng hé) has been increasingly adopted into the English language as “blind box”. It's now the standard way to describe this unique sales model, demonstrating the significant impact this Chinese phenomenon has had on consumer markets worldwide.

The idea of purchasing a box containing unknown items has existed under various iterations, including random boxes, lucky boxes, product boxes, and loot boxes or loot crates in video games. Product boxes, such as curated subscription models, offer surprise selections that may include samples or full-sized items. The concept of “loot boxes” or “loot crates” is prevalent in video games, where players purchase virtual boxes with randomized rewards. Additionally, the term “mystery box” serves as a broader descriptor emphasizing the unknown aspect of the purchase. However, the term “blind box” has gained significant prominence due to its recent popularity alongside the physical blind box trend. This phrasing reflects the Chinese term “盲盒” (máng hé) and underscores the complete lack of prior knowledge about the specific item contained within. The word “blind” emphasizes the element of the unforeseen and the inherent risk involved in the purchase.

The Thai word for “blind box” is “กล่องสุ่ม”. This compound word breaks down into two parts. Firstly, “กล่อง” (klong) directly translates to “box,” “case,” or “container.” Secondly, “สุ่ม” (sùm) means “random” or “at random”. Together, the term “กล่องสุ่ม” (Klong sùm) literally means random box, accurately conveys the concept of a blind box – a container with unknown contents selected at random. This emphasis on the element of surprise is what makes blind boxes particularly appealing.

2.1.2 Overview of the Current Blind Box Industry

Blind boxes have become increasingly popular in Thailand in recent years.² These products come in various forms, physical and digital, offering a sense of excitement and the potential to acquire rare or valuable items. While readily available, the contents of these boxes remain a mystery until purchase, creating a thrill of anticipation and surprise. These opaque containers hold unknown items within, creating an element of surprise and anticipation for consumers. They are purchased without any prior knowledge of the contents, fostering a sense of excitement surrounding the potential for acquiring rare or valuable items.

China has emerged as a powerhouse in the collectibles blind box market, experiencing exponential growth since 2015 and is expected to reach 30 billion by 2024.³ In the first half of 2023, Pop Mart, a leading blind box toy company, reported a significant increase in revenue, reaching 2.814 billion CNY.⁴ This represents a 19.3% increase compared to the same period in the previous year.⁵ Additionally, the company's adjusted net profit rose to 535 million CNY, reflecting a 42.3% increase year-over-year.⁶ The booming economy has created a large consumer base with disposable income, allowing them to explore novel retail formats like blind boxes. Widespread internet adoption has further boosted their popularity, with e-commerce platforms and social media facilitating discovery and purchase. Additionally, the

² “‘Pop Mart’ พากลองสู่ผู้บริโภคตลาดไทย ลุยเปิดสาขา 6 ในกทม.’ (ข่าวหุ้น, 10 กรกฎาคม 2567) <<https://www.kaohoon.com/news/684705>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [‘Pop Mart’ Brings Mystery Boxes to the Thai Market, Opening 6 Branches in Bangkok’ (kaohoon, 10 July 2024) <<https://www.kaohoon.com/news/684705>> accessed 20 July 2024].

³ Lige Fu and Zheyu Zhao, ‘Chinese Blind Box Market Needs Regulating’ (2022) 219 *Advances in Economics, Business and Management Research* 478-484 <<https://www.atlantispress.com/proceedings/icemed-22/125975416>> accessed 28 March 2024.

⁴ ‘Pop Mart, a THB 20 billion Art Toys Business, Officially Opens First Flagship Store in Thailand on September 20th at CentralWorld’ (Entertainment News, 20 September 2023) <<https://www.ryt9.com/en/prg/271286>> accessed 13 April 2024.

⁵ *ibid.*

⁶ *ibid.*

diverse demographics within China play a crucial role. The company also has been opening offline stores in new international markets, including France, Malaysia, Thailand, the United States, and Australia.⁷ By opening physical stores in key locations worldwide, Pop Mart aims to increase brand awareness and connect directly with customers in these new markets. Young adults, collectors, and individuals seeking unique or trendy items are captivated by the thrill and surprise associated with blind boxes.

The popularity of mystery boxes has grown significantly in Thailand in recent years, driven by the country's growing online shopping culture and the influence of social media. Established brands and online sellers have embraced the trend, with many using live streams on online platforms to generate excitement and promote their mystery boxes. This has contributed to the widespread popularity of mystery boxes in Thailand, with stores like toy stores, department stores, and even convenience shops now offering them. The success of mystery boxes has also been evident in the establishment of Pop Mart's first physical store in Thailand. This Chinese retailer, known for its collectible figurines, marks a shift from the online dominance of mystery boxes in the country. The presence of Pop Mart, alongside the widespread availability in other stores, reflects the deep penetration of mystery boxes into the Thai market and the significant profits they generate for businesses in various sectors.

While the legality and social impact of blind boxes raise questions, these products offer potential advantages for both consumers and businesses. For consumers, the allure of the unknown and the chance to acquire a rare or valuable item can spark excitement and enjoyment. This element of surprise and potential reward gamifies the experience, fostering engagement and anticipation. Additionally, blind boxes can cultivate communities among collectors who share a common interest in completing sets or acquiring unique items, fostering a sense of belonging and connection. From a business perspective, blind boxes can serve as a creative marketing

⁷ Huaxia, 'China's Pop Toy Market Maintains Rapid Growth' (Xinhuanet, 2 November 2023) <<https://english.news.cn/20231102/3f95532c51b14242b75195bf433bd068/c.html>> accessed 28 March 2024.

tool, generating buzz and excitement around new products. This approach can enhance brand awareness and drive sales, offering businesses a unique way to engage with their target audience. Furthermore, the blind box industry contributes to the economic landscape by creating jobs in various sectors, such as manufacturing, logistics, and retail. Additionally, by offering a variety of products in blind boxes, businesses may potentially make these items more accessible to consumers at a potentially lower average cost per item.

2.1.3 Evolution of Blind Box

This concept of hidden treasures and the thrill of the unknown has a long history. Dating back to World War II. The country that first started selling them was Japan, where their history can be traced back to two important periods: the Edo period (1603-1868) and the Meiji period (1868-1912). During the Edo period, kimono sellers often sold bags filled with a variety of kimonos, called “Ebisu bags,” named after the Japanese god of commerce and luck. In the Meiji period, the concept of mystery boxes expanded to include a wider variety of products, and the name was changed from “Ebisu bags” to “Fukubukuro”.⁸ Today, the Japanese tradition of Fukubukuro continues in retail sales. Fukubukuro are often sold around New Year’s Day and can be a great way to get a variety of items at a discounted price. Following Fukubukuro’s success, the early 20th century saw the emergence of Gachapon machines. These machines dispensed miniature toys in capsules, captivating both children and adults with their small size and unknown contents. Similar to Fukubukuro, Gachapon offered a sense of surprise and collection at a budget-friendly price, further solidifying the concept of hidden treasures and the thrill of the unknown in Japanese

⁸ Thai PBS World’s General Desk, ‘Lifting the Lid on Thailand’s ‘Mystery Box’ Trend’ (Thai PBS World, 28 February 2021) <<https://www.thaipbsworld.com/lifting-the-lid-on-thailands-mystery-box-trend/>> accessed 28 March 2024.

culture. The concept of blind boxes then evolved over time, expanding beyond kimonos to encompass a much wider range of products around the world.⁹

In the western world, the concept of seeking surprise and potentially valuable rewards can be traced back to the emergence of Magic: The Gathering (MTG) in 1993. MTG introduced elements of chance through randomized booster packs containing cards of varying rarities. This system injects excitement into the game, as players anticipate finding powerful cards that can significantly impact their gameplay and potentially hold collection value. Another notably type of blind box in the western world is a loot crate. It is a blind box containing merchandise related to video games, movies, cartoons, or anime.¹⁰ The key aspect is that the buyer doesn't know what items they'll receive beforehand. Loot crates typically contain a variety of items, such as t-shirts, figurines, toys, posters, stickers, and more. Lootcrate, the first of its kind, was launched in 2012 by Matthew Arevalo and Chris Davis. Today, they offer a variety of crates to choose from, including Lootcrate DX, Loot Wear, Loot Anime, and Loot Gaming.¹¹

Blind boxes have become a popular phenomenon, but their true nature is a topic of debate. For Thailand, the concept similar to blind boxes has also been around for a long time, appearing in various forms, like egg-scooping games and

⁹ อณัญญา สวัสดิ์พาณิชย์ และปรมาภรณ์ วีระพันธ์, 'การคุ้มครองผู้บริโภคในสัญญาซื้อขายสินค้าแบบกล่องสุ่มผ่านระบบออนไลน์' (2566) 2 วารสารวิจัย มข. สาขามนุษยศาสตร์และสังคมศาสตร์ (ฉบับบัณฑิตศึกษา) 37 <<https://so04.tci-thaijo.org/index.php/gskkuhs/article/view/266605>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [Anunya Sawatpanich and Paramaporn Weeraphan, 'The Consumer Protection in Selling and Purchasing The Mystery Box Via Online System' (2023) 2 KKU Research Journal of Humanities and Social Sciences (Graduate Studies) 37 <<https://so04.tci-thaijo.org/index.php/gskkuhs/article/view/266605>> accessed 20 July 2024].

¹⁰ ชนภัทร สุดาวงค์, 'ข้อจำกัดทางกฎหมายในการควบคุมกล่องสุ่มในเกมออนไลน์' (วิทยานิพนธ์ นิติศาสตรมหาบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย 2565) <<https://digital.car.chula.ac.th/chulaetd/6352>> สืบค้นเมื่อ 16 เมษายน 2567 [Chonnapat Sudawong, 'The Legal Limitation in Regulating Loot Boxes in Online Gaming' (LL.M. Thesis Chulalongkorn University 2022) <<https://digital.car.chula.ac.th/chulaetd/6352>> accessed 16 April 2024].

¹¹ 'How Does Loot Crate Work? Longer Versions' (LOOTCRATE) <<https://lootcrate.com/pages/how-it-works>> accessed 28 March 2024.

lucky star games at temple fairs, sticker albums, and collectible cards. These familiar traditions, while seemingly harmless, share several key characteristics with modern blind boxes that make them problematic. Here are several key characteristics that make them problematic:

1) The Element of Chance: Unlike traditional promotions where the buyers know exactly what they are getting, for blind boxes, the buyers pay money for a box, but the contents are a mystery. This injects an element of chance and excitement into the purchase, similar to games of luck. There is a chance the buyers might win a valuable prize, but there's also a risk of getting something buyers don't want, or even has less value than what they paid for. This uncertainty adds a layer of thrill that traditional promotions lack.

2) The Thrill of the Unknown: The mystery surrounding blind boxes is a major part of their appeal. Buyers don't know what they are getting until they purchase it, creating a sense of anticipation and excitement. The possibility of finding a rare or valuable item or a prize adds to the intrigue.

3) Sellers Play the Game: Blind box sellers leverage this excitement strategically. They make their products accessible and enticing, using tactics like live broadcasts, vending machines, and online partnerships to reach a wide audience. They dangle the possibility of winning desirable prizes, further fueling the desire to participate in the gamble.

4) Value Disparity: There's a concern that the excitement of blind boxes can mask a potential value gap. Because of predetermined rarity systems, some boxes contain coveted high-value items, while most contain more common, less valuable ones, even less than the price of the box. This means buyers could consistently buy boxes without ever getting the high-value prize, essentially spending more than the value of the items they receive.

Because of this characteristic, under Thai law, some blind boxes that involve win/lose scenario might be considered a type of gambling, falling under the category of "games of chance" defined in Sections 4 in List B number 5 to 15, and some blind boxes that include the high value prize are similar to the premium gifts or prizes stipulated in Section 8 of the Gambling Act B.E. 2478 (1935).

Hence, blind boxes offer a surprisingly diverse range of products, catering to a wide variety of interests. One common way to categorize them is based on the types of items found within. Popular categories include:

2.1.3.1 Product Blind Boxes

This category encompasses a wide variety of physical products that utilize the surprise element to seek consumer interest. Some popular subcategories, including toys and figurines, cosmetics and beauty products, snacks and food, stationery, and lifestyle goods. The product blind box can be organized by the well-known brand who manufacture the product, for example, the Pop Mart collectible blind box, the Smooth E facial product blind box, or organized by the retail store like the Shopee blind box or the Watson cosmetic blind box, or by the individual resellers of the products. The chance that buyers might receive the products worths more or less than the purchasing price depends solely on the blind box organizers.

(1) Loot boxes

Primarily found in video games, loot boxes are the type of product blind box which contain virtual prizes that players can purchase. These prizes are randomized and can include in-game items, characters, or other digital bonuses. Loot box can only be organized by the game developers and usually the item cannot be sold in the secondary market.

2.1.3.2 Prize Blind Boxes

The prize blind box is similar to the product blind box, but it also contains the extra prize in the box. These boxes offer a mix of items or follow a specific theme, but always keep their contents secret. The excitement lies in the possibility of uncovering a surprise item of significant value, potentially even an iPhone, a car, or gold.

In essence, blind boxes, particularly those products blind box that involve win/lose scenario, and those prize blind box that give high-value prizes, blur the lines between traditional promotions and gambling according to the Gambling Act B.E. 2478 (1935). Their reliance on chance, the thrill of the unknown, calculated scarcity, and focus on customer involvement create a system that closely resembles games of chance, encouraging repeated purchases and prioritizing profit generation.

Despite the risk of legal restrictions, blind boxes are still widely available in Thailand. Currently, no specific laws or regulations govern them, and the government has not taken any concrete steps to enforce existing gambling laws against them. The legality of blind boxes in Thailand is complex. While technically illegal under the Gambling Act, they remain widely available with no clear enforcement. This topic will be explored in details later in Chapter 4.

2.1.4 Retail Landscape

Blind boxes can be enjoyed on various platforms. The most common are:

2.1.4.1 Physical Stores

Blind box popularity has translated into the real world with the rise of dedicated blind box physical stores. These stores cater specifically to collectors and enthusiasts, offering a curated selection of blind boxes from various brands and franchises. The two most common physical stores are:

(1) Retail Stores

Retail stores typically offer a wide selection of blind boxes from various brands and themes, allowing customers to choose based on their preferences and potentially introducing them to the world of blind boxes if they're unfamiliar with the concept. The customers can see the product types on the boxes' packages, sometimes with the percentage of each item, so they can estimate the chance of getting the product or item they wanted or getting something else. Some blind box retail stores, like Pop Mart, sell only their products or collectable items, often featuring attractive designs and representing specific themes or popular characters. The core product in these stores is the blind box itself, where the customers aim to discover rare finds which has higher market price in collectible community.

(2) Vending Machines

These machines dispense sealed boxes containing various items, adding a layer of excitement and a touch of the unknown to the traditional vending experience. Unlike Gachapon machines, where the players can see the number of each item left through the machine window, these machines completely

conceal the contents of the boxes they dispense. There are two main types of blind box vending machines, each catering to different interests. Firstly, the product vending machines which offer a wider range of items beyond the typical snacks and drinks found in traditional vending machines. Customers can try their luck and potentially win a variety of products, ranging from cosmetics and snacks to stationery, electronics, and even gold. The element of surprise adds a fun twist to acquiring everyday items, turning a simple purchase into a potentially rewarding and exciting experience. The second type is a toy blind box Machine. These machines cater specifically to collectors, dispensing small figurines, toys, or other collectable items related to popular themes or characters. These machines tap into the growing popularity of collectibles, offering a convenient and exciting way for fans to expand their collections, potentially get the valuable rare finds like in the retail store. However, since the blind boxes are stacked in the vending machine, the buyer will not be able to see the percentage of each item on the packages of the boxes.

2.1.4.2 Online Stores

Online platforms stoke the fires of the blind box frenzy. Social media lets users buy, sell, and trade blind boxes, building communities. Live streams showcase contents and fuel impulse buys. E-commerce giants offer wider selection and platform-specific boxes. Even video games have “loot boxes” with random rewards, offering instant gratification within the game. The detailed explanation of these common online stores are as follows:

(1) Social Media

Numerous social media apps allow the users to listed blind boxes for sale, allowing other users to browse various categories, purchase individual boxes or sets, and sometimes even trade or exchange items in the community. Certain platforms allow online sellers to host live streams, some of these online sellers sell their own blind boxes by live streaming to attract customers. The sellers may show some of the products that may be in the box or simply describe the types of products in general to attract customers. The blind box in these live streams usually limited in times and number, which encourage viewers impulsive purchases. The starting point of this trend is the famous 10,000-baht and 100,000-baht blind boxes sold by

Pimrypie,¹² a successful Thai online seller. The Pimrypie blind box contained a variety of items, including luxury goods, electronics, cosmetics, and even a car.¹³ The sale of the blind box generated a lot of buzz on social media, and it helped to boost Pimrypie's popularity. The success of Pimrypie's blind box sale has inspired other online sellers in Thailand to follow suit. Many influencers follow the trend by posting content unboxing these blind boxes, creating excitement, and potentially influencing viewers to purchase their own.¹⁴ As a result, mystery boxes have become increasingly popular in Thailand since then.

(2) E-commerce Platforms

Major online retailers like Amazon, eBay, Lazada, and Shopee, often allow sellers to list blind boxes, offering a wider selection and potentially competitive prices.¹⁵ Some platforms create their own blind box, for example, Lazada's secret box which curates goods from various famous brands selling on Lazada.¹⁶ Some

¹² ‘เกินต้าน! พิมรี่พาย ขายกล่องสุ่มราคา 1 หมื่น ปิดยอด 100 ล้าน ได้ใน 5 นาที’ (Matichon Online, 5 ธันวาคม 2564) <https://www.matichon.co.th/social/news_3073850> สืบค้นเมื่อ 5 เมษายน 2567 [‘Too Much to Resist! Pimrypie Sells Random Boxes for 10,000 Baht, Closes 100 Million in 5 Minutes’ (Matichon Online, 5 December 2021) <https://www.matichon.co.th/social/news_3073850> accessed 5 April 2024].

¹³ ‘สุดเซอร์ไพรส์! กล่องสุ่มพิมรี่พาย 1 แสน เปิดออกมาได้รถป้ายแดง (Matichon Online, 1 ธันวาคม 2564) <https://www.matichon.co.th/social/news_3068005> สืบค้นเมื่อ 5 เมษายน 2567 [‘Super Surprise! 100,000 Random Box of Pimrypie. Open It and Get a Brandnew Car’ (Matichon Online, 1 December 2021) <https://www.matichon.co.th/social/news_3068005> accessed 5 April 2024].

¹⁴ ‘เปิด “กล่องสุ่มพิมรี่พาย” มีอะไรบ้าง ใครผิดหวัง ใครสมหวัง โซเชียลเสียงแตก’ (Matichon Online, 23 ธันวาคม 2564) สืบค้นเมื่อ 5 เมษายน 2567 [‘What’s in It? Who’s Disappointed? Who’s Fulfilled? Social media divided’ (bangkokbiznews, 23 December 2021) <<https://www.bangkokbiznews.com/lifestyle/978838>> accessed 5 April 2024].

¹⁵ Spirit Channel, ‘เปิดกล่องสุ่ม ลุ้นของดี ๆ จาก Lazada’ (YouTube, 7 สิงหาคม 2563) <<https://www.youtube.com/watch?v=VMIJER2S5o0>> สืบค้นเมื่อ 5 เมษายน 2567 [Spirit Channel, ‘Open a Random Box and Get a Chance to Win Good Things from Lazada’ (YouTube, 7 August 2020) <<https://www.youtube.com/watch?v=VMIJER2S5o0>> accessed 5 April 2024].

¹⁶ yugioh2500, ‘มารู้จัก “Lazada Secret Box” กล่องแห่งความลับลาซาด้า’ (iReview.in.th, 11 พฤษภาคม 2559) <<https://ireview.in.th/lazada-secret-box>> สืบค้นเมื่อ 5 เมษายน 2567 [yugioh2500, ‘Get to

platforms are created just for blind box selling, for example, Lootcrate, where there is a variety of blind boxes for buyers to browse. Some platforms incorporate live streaming features, allowing sellers to showcase potential items within the blind boxes, creating excitement and encouraging impulsive purchases like on social media platforms. The excitement and anticipation associated with blind boxes can contribute to higher visitor engagement and potentially drive repeat purchases on e-commerce platforms. However, some e-commerce platforms, for example eBay, have strict policies regarding chance listings,¹⁷ which encompass mystery boxes because of the ethical concern.

(3) In-Game Purchase

Some video games incorporate digital blind box mechanics, usually known as “Loot Box”, where players can use in-game currency or real money to purchase virtual containers with random rewards, for example, character customizations, weapons, or power-ups, but the player cannot know for sure the value of the prize they will receive from the purchase. Unlike their physical counterparts, which offer the excitement of holding and displaying the discovered item, digital blind boxes prioritize convenience and immediate use within the specific game they’re associated with. This means game players can purchase and open them instantly, eliminating the need for delivery or physical store visits. Additionally, the acquired items are instantly usable within the game, allowing players to enjoy them immediately without the need to wait for them to arrive. This convenience and immediate gratification contribute significantly to the appeal of digital blind boxes, especially for gamers who value instant access and engagement within their virtual worlds.

Regardless of their form, Blind boxes share a common element with games of chance, the buyer cannot know for certain what is inside the box they

Know “Lazada Secret Box”, a Box of Lazada Secrets’ (iReview.in.th, 11 May 2020) <<https://ireview.in.th/lazada-secret-box>> accessed 5 April 2024].

¹⁷ ‘Chance Listings Policy’ (eBay) <<https://www.ebay.com/help/policies/prohibited-restricted-items/chance-listings-policy?id=4311>> accessed 5 April 2024.

purchase. This element of surprise and uncertainty is what drives the excitement and appeal of blind boxes, as buyers are essentially gambling on the chance of receiving a valuable or desirable item. The thrill of the unknown is what keeps buyers coming back for more, as they never know what they might get, just like gameplay. This element of chance also creates a sense of community among blind box collectors, as they share their experiences and excitement with each other and exchange the items for monetary value.

2.1.5 Concerns and Potential Risks of Blind Boxes

2.1.5.1 Legality of Blind Boxes

The rise of blind boxes in Thailand has sparked concerns, with many questioning their legality under existing laws.¹⁸ Critics argue that the element of chance involved in winning valuable prizes makes them akin to gambling, potentially violating the Gambling Act (BE 2478) and the Consumer Protection Act (BE 2522). Blind boxes are similar to gambling games of chance, in which the buyer hopes to win a prize that is not money or has a monetary value, according to the list of gambling

¹⁸ นัฏพร กรกนกมล, ‘มาตรการทางกฎหมายในการควบคุมการซื้อขายสิ่งของในเกมออนไลน์ในโทรศัพท์มือถือ โดยระบบกล่องสุ่ม (loot boxes) ในประเทศไทย’ (รายงานส่วนบุคคล สำนักงานคณะกรรมการกฤษฎีกา 2561) <<https://lawforasean.krisdika.go.th/File/files/1531771279.55f87242b1113a9e9af0a424034b05e7.pdf>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [Natthaporn Korkanokkamon, ‘Legal Measures to Control the Purchase of Online Game Items on Mobile Phones by the Drum System (Loot Boxes) in Thailand’ (Personal Studies Report Office of the Council of State 2019) <<https://lawforasean.krisdika.go.th/File/files/1531771279.55f87242b1113a9e9af0a424034b05e7.pdf>> accessed 20 July 2024]. See also เจตริน ใจตรง, ‘ปัญหาการบังคับใช้กฎหมายเกี่ยวกับการซื้อขายสินค้าประเภทกล่องสุ่ม’ (มหาวิทยาลัยรามคำแหง 2565) <<http://www.lawgrad.ru.ac.th/Abstracts/1708>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [Jetrin Jaithong, ‘Problems in Enforcing the Law Regarding Trading in Random Box Products’ (Ramkhamhaeng University 2022) <<http://www.lawgrad.ru.ac.th/Abstracts/1708>> accessed 20 July 2024]; ‘ทำไม “กล่องสุ่ม” ถึงเร้าใจ ผิดกฎหมายไหม ซื้ออย่างไรไม่ให้ถูกโกง’ (ฐานเศรษฐกิจ, 23 มีนาคม 2566) <<https://www.thansettakij.com/news/general-news/559763>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [‘Why Are “Mystery Boxes” So Exciting? Are They Illegal? How To Buy Them Without Getting Scammed?’ (thansettakij, 23 March 2023) <<https://www.thansettakij.com/news/general-news/559763>> accessed 20 July 2024].

games in Section B of the Gambling Act, BE 2478, which is a gambling game that can be played if it is legally permitted or supervised by authority. While some blind box sales might fall under Section 8 of the Gambling Act, which prohibits unauthorized games offering prizes, the current legislation lacks clear classification regarding blind boxes specifically. This ambiguity creates a legal grey area, leaving the true nature of blind boxes in the eyes of the law ambiguous.

2.1.5.2 Normalization of Gambling (Gamblification)

Blind boxes design and operation have also raised concerns due to their similarities to gambling on the potential for manipulative spending practices. They often utilize a variable ratio reinforcement schedule,¹⁹ similar to slot machines. This means buyers receive rewards (desired items) after an unpredictable number of attempts, fostering a sense of anticipation and encouraging continued spending in hopes of acquiring the desired item. This unpredictable nature can potentially lead to addictive behaviors and excessive spending, particularly among vulnerable individuals and minors.

Some blind box systems employ tactics commonly used in gambling, such as, creating a sense of urgency and encouraging impulsive purchases by offering blind boxes for a limited time or in limited quantities, making it difficult for players to assess the true cost of acquiring a desired item and making certain items extremely rare, increasing their perceived value and incentivizing players to purchase more boxes in hopes of obtaining them, and providing items similar to the desired one, fueling the desire to “complete the set” and keep spending.

Furthermore, the disappointment associated with not receiving the desired item can negatively impact players’ mental health, potentially leading to feelings of frustration, anxiety, and even depression. Additionally, predatory practices

¹⁹ Leon Y. Xiao, ‘Regulating Loot Boxes as Gambling? Towards a Combined Legal and Self-Regulatory Consumer Protection Approach’ (2021) 4(1) Interactive Entertainment Law Review 27–47 <https://www.researchgate.net/publication/349713047_Regulating_Loot_Boxes_as_Gambling_Towards_a_Combined_Legal_and_Self-Regulatory_Consumer_Protection_Approach_Interactive_Entertainment_Law_Review_41_27-47> accessed 28 March 2024.

employed in some blind box systems, such as limited-edition items and opaque pricing structures, can exploit vulnerable individuals and exacerbate these risks.

2.1.5.3 Risk of Addiction

While the thrill of the unknown and the potential for rare finds fuel their appeal, a hidden danger lurks beneath the surface: the risk of addiction. This risk stems from the interplay between dopamine,²⁰ the brain's reward chemical, and the inherent mechanics of blind boxes. Unlike a guaranteed reward after a set number of purchases, blind boxes operate on a variable ratio reinforcement schedule. This means the desired item can appear after any number of attempts, keeping the reward unpredictable. The anticipation of discovering the unknown item within becomes the reward, driving the desire to purchase more boxes. With each purchase, the dopamine spike associated with anticipation is released. However, receiving an undesired item can lead to disappointment, a drop in dopamine levels, and potentially, a craving to recapture the initial excitement. This cycle of seeking the reward (dopamine spike) and avoiding disappointment (dopamine drop) can lead to compulsive buying behavior, a defining characteristic of addiction.

The vulnerable group are the young people. A recent study in Thailand reveals a troubling trend that gambling and, particularly, online gambling, are posing significant challenges for young people. The 2017 survey by Chulalongkorn University's Gambling Problem Study Center found that over 3.6 million Thai youths gamble, with nearly half incurring gambling debts.²¹ While nearly half of youth surveyed expressed a disinterest in online gambling, a concerning portion, nearly a quarter, expressed an outright desire to participate. The use of the internet is a major factor that has made online gambling very popular among children and youth because it is

²⁰ *ibid.*

²¹ 'เยาวชนไทยติดพนันจนมากกว่า 3.64 ล้านคน ห่วงพนันบน "อี-สปอร์ต" ดึงนักเล่นหน้าใหม่' (กรมสุขภาพจิต, 13 กันยายน 2562) <<https://dmh.go.th/news-dmh/view.asp?id=29953>> สืบค้นเมื่อ 5 เมษายน 2567 [‘Over 3.64 Million Thai Youths Are Heavily Addicted to Gambling, Concerns Arise Over “E-Sports” Gambling Attracting New Players.’ (Department of Mental Health, 13 September 2019) <<https://dmh.go.th/news-dmh/view.asp?id=29953>> accessed 5 April 2024].

easily accessible. These findings highlight the urgent need to address the issue of gambling and online gambling among Thai youth.

Despite legal restrictions, many young people gamble before reaching adulthood. The study on factors that influence children's gambling attitudes and consumption intentions shows a large proportion (66%-75%) of children participate in some form of gambling during their pre-teen and teenage years. While traditional forms like lotteries and scratch cards are more common. Importantly, similar to adults, children who gamble face various risks, including mental health issues, self-confidence problems, poor academic performance, and increased involvement in risky behaviors.²²

2.2 Legal Framework

The previous analysis of the issues and factual background surrounding blind boxes suggests their classification under gambling laws might be uncertain. While not a new concept, their rising popularity in current trends, coupled with their diverse forms and distribution channels, raises concerns. Notably, despite these variations, blind boxes share 5 common concerns and potential risks, including the legality of blind boxes, normalization of gaming, risk of addiction, targeting youthful vulnerability, and consumer exploitation, as previously discussed.

Therefore, in order to analyze whether legal measures can respond to solving these risks related to blind boxes, the specific legal principles of the gambling law will be discussed as follows.

²² Hannah Pitt and others, 'Factors That Influence Children's Gambling Attitudes and Consumption Intentions: Lessons for Gambling Harm Prevention Research, Policies and Advocacy Strategies' (2017) 14 Harm Reduction Journal <<https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-017-0136-3>> accessed 13 April 2024.

2.2.1 Gambling Law

The major specific legal framework that is important to consider in relation to the blind box problem is gambling law.

Gambling law is a principle that is flexible in interpretation and depends largely on the consideration of facts. This is different from the principles of consumer and child rights protection and recognition, as gambling law is an application of the principle of state restriction of freedom for the sake of social order. For the most part, it is based on the principle of proportionality in the determination of state measures to restrict freedom, which is a principle that requires a great deal of consideration of facts and social context. Gambling law often differs from society to society, or even within each jurisdiction, and it is difficult to have a single principle that is universal.

2.2.1.1 The Concept, Origins, and Objectives of State Control Related to Gambling Laws: The Dangers of Unregulated Gambling

Gambling has a long-standing presence in Thailand, with its roots dating back to the Sukhothai period. The rise of trade with China during this era led to the introduction and widespread popularity of various Chinese gambling practices. Recognizing the potential for revenue generation, the Thai government implemented a system of taxation on gambling activities. This tax, known as “Akon Bon Bia” and “Akon Huay,” was levied on gambling dens and lotteries, respectively, and collected by a designated individual. This system generated substantial income for the state, significantly contributing to its budget. However, while the financial benefits were evident, the legalization of gambling for profit also brought about negative consequences. The accessibility and allure of gambling led to widespread addiction, causing many to neglect their work and families in pursuit of quick riches. This resulted in a decline in the socioeconomic status of numerous individuals and families. Additionally, the ease and perceived profitability of gambling fostered a disinterest in traditional occupations, as many viewed them as less lucrative and more

arduous. This perception persisted even in the face of losses, as gamblers often believed they could easily recoup their money.²³

In 1930, Thailand took a significant step towards regulating gambling by enacting its first Gambling Act. This act consolidated various existing gambling laws into a single, comprehensive legislation. Subsequently, the Gambling Act of 1935 was introduced, modernizing the law and expanding its scope to encompass various forms of gambling. This act has since evolved and remains the foundation of gambling regulation in Thailand today.²⁴

The inherent dangers of gambling have made it a target for regulation throughout history. Uncontrolled, it becomes a breeding ground for both individual problems and broader criminal activities. It's a source of income for criminal organizations, while also fostering crimes like fraud, forgery, and money laundering.²⁵

The regulation of gambling, through laws and policies, is a multifaceted issue with diverse schools of thought. Each conceptual approach offers a unique lens through which we can understand the role of gambling within society and how the law should address it.

(1) Gambling as a Personal Right

This perspective champions the concept of private autonomy, arguing that gambling, for those with the means, is fundamentally a private choice that should not be infringed upon by the state. It should be treated as a legal form of leisure or entertainment. Individuals should have the freedom to wager as they see fit, without excessive government involvement. Public Choice Theory, which falls within this concept, views economic development as the driving force behind the rise of legalized gambling industries. Casinos and other gambling institutions become widely accepted as legitimate businesses. A key focus rests on the commercial aspects

²³ ทนงศักดิ์ ถิ่นศรีนาวล, 'กฎหมายเกี่ยวกับการพนัน' (ม.ป.ท. มหาวิทยาลัยธรรมศาสตร์ 2529) 77-79 [Tanongsak Thinsrinaul, 'Laws on Gambling' (LL.M. Thesis Thammasat University 1986) 77-79.]

²⁴ *ibid* 79 and 80.

²⁵ Virgil W. Peterson, 'Gambling. Should it be Legalized' (1949) 3 *Journal of Criminal Law and Criminology* 259-260 <<https://www.jstor.org/stable/1138545>> accessed 13 April 2024.

of gambling and the complex relationship between governments and private gambling enterprises, including the state's interest in generating tax revenue through regulated gambling activities.²⁶

(2) Gambling as a Potential Social Problem

In contrast to viewing gambling as solely a personal choice, others argue it poses inherent risks that can lead to social harm. Unlike ordinary leisure activities, gambling carries the potential for addiction, financial ruin, and association with other criminal activities. This perspective argues in favor of strict regulation to protect the public from these potential dangers. Socioeconomic analysis examines gambling's relationship within the broader economic and social structure of society. In certain countries, for example, state lotteries or casinos may be legalized under tightly controlled government policies. A core component of this framework involves analysis of the culture and psychology of gambling within society, aiming to understand the motivations and vulnerabilities of those who participate.²⁷

(3) Gambling as a Moral Issue

Expanding beyond pragmatic considerations, this approach delves into the moral and ethical implications of gambling. It poses questions about the impact on individuals, families, and ultimately on the fabric of society.²⁸

2.2.1.2 Gambling Definitions and Characteristics

(1) Definitions

The legal definition of “gambling” varies across different countries, with some similarities and differences. For Thailand, in the past, the Siamese state's understanding of gambling was quite different from the contemporary definition, encompassing a wider range of activities. Interestingly, none of the major gambling laws or the Civil and Commercial Code during this period provided a clear definition. The Minister of Justice even acknowledged the difficulty in defining

²⁶ Tanongsak Thinsrianaul (n 23) 77-81.

²⁷ *ibid.*

²⁸ *ibid.*

“gambling” while reviewing a draft law in 1928. This lack of a precise legal definition left the responsibility of interpreting what constituted gambling to the judiciary.²⁹

In present-day Thailand, the legal landscape surrounding gambling echoes this historical ambiguity. Despite the passage of time, no explicit definition of gambling is found in current Thai laws, including the Gambling Act of 1935, which remains the principal legislation governing gambling activities. This lack of a clear definition continues to pose challenges in interpretation and enforcement, leaving room for varied interpretations.

According to the Royal Institute Dictionary (2542):³⁰ gambling generally refers to “playing for money or other things, relying on intelligence, skill, tricks, wit, and dexterity, as well as luck.” Gambling on a bet refers to “gambling where the winnings and losses are determined by negotiation.” To bet means “to dare (law); to negotiate the winnings and losses based on an uncertain future event as the condition of winning or losing.”

Scholars have offered definitions of gambling. While the core idea remains consistent, these definitions offer slightly different perspectives. Several definitions emphasize the elements of uncertain events and wagers.

Phra Manuphawan Wimon Sastra defines gambling as a situation where parties agree to exchange money, or valuables based on the outcome of an uncertain event.³¹ Professor Chid Sreshtabuttra aligns with this perspective, defining gambling as a contract where parties agree to exchange money or property based on an uncertain future event.³² In both definitions, the loser is the party who

²⁹ James Alastair Warren, ‘Gambling, the State and Society in Siam, c. 1880-1945’ (Ph.D. Thesis University of London 2007) 17.

³⁰ Royal Institute Dictionary, ‘Gamble’ and ‘Bet’ (*Royal Institute Dictionary 1999*) <<https://dictionary.orst.go.th/>> accessed 28 March 2024.

³¹ อธิคม อินทภูติ, ‘กฎหมายเกี่ยวกับการพนันในประเทศไทย’ (2524) 2 วารสารนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 122 [Athikom Intuputi, ‘Laws Regarding Gambling in Thailand’ (1981) 2 Thammasat Law Journal 122].

³² จี๊ด เศรษฐบุตร, คำอธิบายกฎหมายแพ่งและพาณิชย์ ว่าด้วยยืม ฝากทรัพย์ เก็บของในคลังสินค้า ประณามการพนันและขั้นตอน (โครงการตำราและเอกสารประกอบการสอน มหาวิทยาลัยธรรมศาสตร์ 2531) 342 [Jeed

fulfills the agreement when the event becomes certain and doesn't align with their prediction.

Another perspective focuses on differing opinions and uncertain outcomes. Luang Wisescharayarak defines gambling as a situation where parties hold differing opinions on an uncertain future event. The winner is determined when the event unfolds and aligns with one party's prediction.³³ The emphasis is on the element of chance and differing beliefs about the future, with the outcome determining the winner and loser.

The English word "gamble" is used to refer to various types of gambling activities. It is defined as "playing a game of chance for the chance to win money or prizes" or "the act of risking something in the hope of gaining something else." Gambling can be characterized as a game or financial transaction that involves an uncertain future outcome. In many foreign countries, for an act to be considered gambling, it must include three elements: stake, chance, and rewards.

(a) Stake: A stake can be money, valuables, or an entry fee paid to participate in a game. Whether paid in cash or other valuables, the stake represents the risk of losing something of value in the hope of winning a prize.

(b) Chance: The outcome of the game, in whole or in part, is determined by chance. This means that luck is a factor in the outcome of the game or bet, regardless of whether skill or experience play a role in the result, to a greater or lesser extent than luck.

(c) Rewards: Players can win prizes in the form of money, valuables, or other forms of monetary value. However, it is important to consider the meaning and definition of "prize" in different countries, as interpretations may vary. For example, the Belgian Gaming Commission defines "prize" as follows: "When a bet is placed, the bet has two possible outcomes for the player: winning or losing the bet."

Sethabutr, *Explanation of Civil and Commercial Law on Loans, Deposits, Warehousing, Compromise, Gambling, and Wagering* (The Project for the Promotion of Textbook and Teaching Materials Thammasat University 1988) 342].

³³ Tanongsak Thinsrinaul (n 23) 83-84.

Winning a prize of any kind by the player, the bettor or the organizer of the game is considered a win, regardless of whether the prize has value or can be converted into money.³⁴

In addition, the Council of State has expressed its opinion on gambling under international law, stating that betting competitions that do not involve luck, such as skill competitions and physical activities such as running, racing, and boxing, are specifically recognized by law. However, if the stakes are high, the court has the power to refuse to hear the case.³⁵

(2) “Games of Chance” and “Gambling”

In foreign gambling laws, the terms “games of chance” and “gambling” appear frequently. These terms may be used in different provisions or sometimes in the same provision. To avoid confusion in the consideration of gambling laws, it is necessary to clearly understand the meaning of both terms.

Games of chance are often used to refer to gambling that is in the form of a “game” or “play.” This means that it is an activity that requires more participation from the player than just placing a bet.³⁶ The scope and definition of “games of chance” may vary or be the same in each country, depending on the provisions of the law or the case law of that country.

Gambling is used in a broader sense than games of chance. It refers to any activity that is defined as gambling by law, regardless of whether it is a

³⁴ Peter Naessens, ‘Research Report on Loot Boxes’ (Submitted to the Belgian Gaming Commission, Brussels 2018) 10 <<https://www.gamingcommission.be/sites/default/files/2021-08/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf>> accessed 14 April 2024.

³⁵ สำนักงานคณะกรรมการกฤษฎีกา, บันทึก เรื่อง การพนันตามกฎหมายต่างประเทศ (เรื่องเสร็จที่ 7/2467) 1 <<https://comment.ocs.go.th/main/download/dlf/pdf/เรื่องเสร็จที่%20๐๐๐๗-๒๔๖๗>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [Office of the Council of State, Memorandum on Gambling under Foreign Law Principles (Case No. 7/2467) 1 <<https://comment.ocs.go.th/main/download/dlf/pdf/เรื่องเสร็จที่%20๐๐๐๗-๒๔๖๗>> accessed 20 July 2024].

³⁶ Kay Dervishi, ‘Other Games of chance and Skill on Albany’s Agenda’ (City & State New York, 18 June 2018) <<https://www.cityandstateny.com/policy/2018/06/other-games-of-chance-and-skill-on-albanys-agenda/178366/>> accessed 14 April 2024.

“game” or “play.”³⁷ Similarly, the scope and definition of “gambling” may vary or be the same in each country, depending on the provisions of the law or the case law of that country. Gambling is therefore a broader term than games of chance. It may include all activities of this nature, from betting, gambling, to lotteries and games of chance. Games of chance are therefore a subset of gambling. It can also be said that games of chance are a form of gambling.

From the definitions mentioned above, gambling can be seen as a legal act, i.e., an agreement between two parties: the organizer of the gambling and the gambler. Gambling arises from the mutual intent of both parties to agree to gamble on something, the method of gambling, and the outcome of the gambling. This is usually money, property, or other things. Therefore, gambling creates a legal relationship between individuals or personal claims between the organizer and the gambler.³⁸

(3) Gambling as a Leisure Activity

Gambling, for many, serves as a popular form of leisure activity, offering elements of entertainment, relaxation, and a much-needed respite from routine. The allure of gambling lies in the potential for excitement, the thrill of anticipation, and the chance – however small – to win something significant. Additionally, the social aspect of gambling, whether in a buzzing casino with friends or within an online community. It’s no surprise then, that for some, gambling becomes an escape mechanism, a temporary distraction from the daily grind and stressors of everyday life.

This is supported by a study examining the motivations and behaviors of “positive players” - those who gamble recreationally without signs of

³⁷ *ibid.*

³⁸ นันทวัฒน์ บรมานันท์, ‘กฎหมายเกี่ยวกับการพนันในประเทศไทย’ (รายงานผลการวิจัยเสนอต่อสำนักงานกองทุนสนับสนุนการสร้างเสริมสุขภาพ (สสส.) 2554) 8 <<https://www.gamblingstudy-th.org/pdf/doc/research/Nantawat2554.pdf>> สืบค้นเมื่อ 14 เมษายน 2567 [Nantawat Boramanand, ‘Gambling Laws in Thailand’ (Submitted to ThaiHealth 2011) 8 <<https://www.gamblingstudy-th.org/pdf/doc/research/Nantawat2554.pdf>> accessed 14 April 2024].

problem gambling.³⁹ The study compared positive players with problem gamblers and found a clear distinction in motivations. Positive players gambled primarily for fun and entertainment, similar to how one might enjoy a movie or sporting event. Their reasons for gambling centered around leisure, such as playing for enjoyment, being entertained, or winning a small prize.

(4) Characteristics of Gambling Offenses

Another important consideration that emphasizes the flexibility and diversity in interpreting gambling laws in each jurisdiction is the nature of gambling offenses. The rationale for criminalizing gambling is based on the idea that gambling can lead to immorality and risk-taking behavior, which can lead to criminal activity and damage people's character by making them dishonest. It can therefore be said that gambling is not inherently evil or wrong but is a crime because it is prohibited by law. In other words, society or lawmakers decide that certain actions should be prohibited or criminalized, even if those actions are not inherently wrong. If they perceive that these actions can cause harm to society, they can be made illegal. In the case of gambling, although the Criminal Code does not define it as a crime and punishable, it is defined in the Gambling Act, which is a law that provides for criminal penalties.⁴⁰

Therefore, gambling offenses are *mala prohibita* offenses, meaning they are offenses because they are defined as such by law. Therefore, whether or not an act is a crime depends on whether the state decides to criminalize it. Therefore, the crime is not in gambling of all kinds, but only in violating the rules of the law that prohibits certain types of gambling.

However, as mentioned earlier, there is still a debate between those who view gambling negatively, associating it with harm to individuals and broader crime problems, and those who see gambling as a recreational activity

³⁹ Richard T. A. Wood and Mark D. Griffiths, 'Understanding Positive Play: An Exploration of Playing Experiences and Responsible Gambling Practices' (2015) 31 Journal of Gambling Studies 1715-1734 <<https://link.springer.com/article/10.1007/s10899-014-9489-7>> accessed 14 April 2024.

⁴⁰ Nantawat Boramanand (n 38) 12 and 13.

based on the right to relaxation. And especially for cases where problems arise where new forms of play emerge that the state has not had the opportunity to consider, it must be determined whether these new forms of gambling are prohibited by law (*mala prohibita*) and would subject violators to legal penalties. This requires the consideration of facts, including laws, social context, and the nature of the game itself.

The legal landscape surrounding gambling is complex, making it difficult to establish definitive, universally applicable principles based solely on legal frameworks alone. Gambling has been a social phenomenon for centuries, existing in various forms throughout history. From ancient wagers on athletic contests to modern-day casinos and online gaming, the allure of gambling lies in the potential for excitement, challenge, and the chance to win something of value. However, the inherent risks associated with gambling – particularly the potential for addiction, financial ruin, and even criminal activity – have necessitated regulation by governments around the world.

Understanding the legal principles surrounding gambling requires acknowledging its complex and multifaceted nature. On the one hand, gambling can be a form of entertainment and recreation, providing individuals with a chance to relax, socialize, and engage in a stimulating activity. Proponents of gambling often emphasize the right to leisure and the potential economic benefits that well-regulated gambling industries can generate for governments and tourism sectors.

On the other hand, gambling can have a significant negative impact on individuals and society as a whole. Problem gambling can lead to addiction, financial hardship, and the breakdown of relationships. Gambling addiction can also be a gateway to criminal activity, as individuals struggling with debt may resort to theft or fraud to support their habit.

Thailand's Gambling Act B.E. 2478 (1935) provides a unique example of a regulated market with a complex approach to gambling. While casino gambling is generally prohibited for Thai citizens, certain forms of lottery and horse racing are permitted. The legal status of blind box remains somewhat uncertain and will be explored in greater detail in Chapters 3 and 4.

CHAPTER 3

FOREIGN LAWS

This comparative analysis examines the legal treatment of blind boxes in the chosen countries, including the United Kingdom, Belgium, Japan, and the People's Republic of China.

This selection of countries offers a rich analytical landscape for several reasons. The first reason is geographic diversity. The chosen countries span a wide range of continents, encompassing both European (UK and Belgium) and Asian (Japan and China) legal and cultural traditions. This allows us to explore how diverse historical and cultural contexts might shape the way each country views and regulates gambling activities. The second reason is the spectrum of regulations. The chosen countries represent a spectrum of gambling regulations. The UK has a relatively liberal market, while Belgium and Japan have a more moderate approach, allowing certain forms of gambling while restricting others. China, on the other hand, takes a very restrictive stance, with most forms of gambling being illegal.

Focusing on four key areas, the analysis will dissect each country's legal definition of gambling, particularly regarding elements of chance. This will determine if the unknown contents and element of chance inherent to blind boxes bring them under the purview of gambling regulations in each jurisdiction. Secondly, the legal status of blind boxes themselves will be explored. Thirdly, any existing regulations will be examined for control measures such as age restrictions or disclosure requirements for manufacturers and retailers. Finally, the responsible government body tasked with overseeing and enforcing any blind box regulations in each country will be identified.

3.1 Legality of Blind Box

3.1.1 Gambling Law

3.1.1.1 United Kingdom

The main law controlling gambling in England, Wales, and Scotland is the Gambling Act of 2005 (Northern Ireland has separate laws). The UK's

gambling industry has changed a lot since the 1960s due to shifting public opinion and technological progress.

Public debate has moved away from total bans on gambling and now focuses on how to regulate the industry and protect consumers. The government recognizes gambling as a legal form of entertainment but believes it should be carefully controlled to prevent criminal activity. The Gambling Act of 2005 reflects this approach, aiming to ensure the industry is legitimate, gives consumers choice, and protects them from harm.⁴¹

The Gambling Act 2005 in the UK utilizes a top-down approach for assessment and enforcement. This means authorities first consider the legal definition of “gambling” for all its various forms. If a particular activity falls under one of the legal definitions of “gambling,” such as “games of chance” or “wagers,” then specific regulations within the Act are applied. These regulations address the organization of specific gambling activities, such as operating slot machines, casinos, bookmakers, or horse racing betting. Each type of gambling has its own set of control measures due to the inherent differences in how they are played. For instance, slot machines, which involve wagers between a player and a machine, require different control mechanisms compared to casinos where players gamble against each other in games of chance.

In English law, the term “gambling” covers a range of activities where there’s a potential for both gain and loss determined by risk. This makes gambling similar to other activities like financial transactions, contracts, entertainment, or sports. While the boundaries between these activities can sometimes overlap, English law makes a clear distinction between three main forms of regulated gambling: betting, gaming, and lotteries. These terms have a long history in both common law and statute law. The Gambling Act of 2005 provides the most current definitions of

⁴¹ House of Common, Culture, Media and sport Committee, ‘The Government’s Proposals for Gambling’ (UK Parliament) <<https://publications.parliament.uk/pa/cm200102/cmselect/cmculmeds/827/827.pdf>> accessed 5 April 2024.

forms of gambling.⁴² It's important to note that these definitions are not completely exhaustive. For example, while "gaming" and "betting" are defined, the underlying concepts of "game" and "bet" are left open. This allows for flexibility in how the law categorizes new forms of gambling.⁴³

Under this law, "game of chance" involves playing a game for a prize, where the outcome is determined by either chance alone or a combination of chance and skill. 'sport' is excluded from this definition. There's no specific threshold for how much chance is needed for a game to be considered 'gaming.' Even a small amount of chance is enough to meet the definition. Exceptions occur with activities that are predominantly skill-based with only a negligible element of chance (like deciding who starts a chess game with a coin toss).⁴⁴

The concept of a 'prize' within this gambling law is very broad, essentially meaning anything of value.⁴⁵ However, there's an exception for gaming machines where the only reward is extended playtime – this alone isn't considered a prize in a legal sense. This distinction is important when looking at 'social gaming', which falls outside the scope of gambling regulation because it doesn't offer tangible rewards.

"Betting" in English law means placing a bet with something of value on an uncertain future event, or a past event with an unknown outcome.⁴⁶ There are several types:

a) Pool Betting (Pari-Mutuel): Participants' stakes are pooled. Winners receive a portion, with the organizer taking a cut. Prizes can be money or other valuables.

⁴² Gambling Act 2005 Sections 6, 9 and 14.

⁴³ *Seay v. Eastwood* [1976] 3 All ER 153, per Lord Wilberforce.

⁴⁴ Carl Rohsler, 'United Kingdom' in Carl Rohsler (ed), *The Gambling Law Review* (Clare Bolton 2021) 392 <https://www.amt-law.com/asset/res/news_2021_pdf/publication_0023219_ja_001.pdf> accessed 28 March 2024.

⁴⁵ Gambling Act 2005 Section 6(5).

⁴⁶ Gambling Act 2005 Section 9.

b) Fixed-Odds Betting: The bookmaker sets odds to ensure a profit, adjusting them based on bets received.⁴⁷

c) Spread Betting: The bookmaker offers a range of potential outcomes. The gambler bets on whether the true outcome will fall above or below the range. Winnings (or losses) are based on how far the outcome is from the spread, making it a riskier form of betting.⁴⁸

d) Betting Prize Competitions: This covers ‘fantasy league’ contests where players predict outcomes of events.⁴⁹

e) Betting Intermediaries: These are services allowing people to bet directly on each other. The intermediary manages the marketplace, holds the stakes, and pays out winnings (taking a commission). This definition can also include betting agents and brokers.⁵⁰

These legal definitions within English gambling law can create challenges for businesses operating in adjacent areas. The definition of ‘betting prize competitions’ can cause issues for organizers of primarily skill-based contests where chance plays a minor role, potentially subjecting them to gambling regulations. Similarly, the broad definition of ‘betting intermediaries’ creates uncertainty for entities like syndicates and advertisers that facilitate bets in some capacity but may not fall neatly under the intended scope of the regulation.

‘Lottery’ is a scheme where prizes are distributed based on chance, and participants pay for the opportunity to win.⁵¹ This includes both pre-determined lotteries (like scratch cards) and post-drawn lotteries where a drawing occurs after tickets are sold.

While not a legal term, ‘raffle’ commonly refers to a type of lottery where each participant buys a unique ticket and one winner is drawn. This

⁴⁷ UK Gambling Act 2005 Section 12.

⁴⁸ UK Gambling Act 2005 Section 10.

⁴⁹ UK Gambling Act 2005 Section 11.

⁵⁰ UK Gambling Act 2005 Section 13.

⁵¹ UK Gambling Act 2005 Section 14.

differs from lotteries where players select their own numbers, potentially resulting in no winners, a single winner, or multiple winners.

Lottery-like schemes without a payment element or those heavily reliant on skill aren't regulated as gambling in English law.⁵² These fall into 'free prize draws'⁵³ or 'skill contests' categories.⁵⁴ Many consumer contests use this distinction to provide incentives without being classified as lotteries. Notably, purchasing goods at normal prices to gain entry into a prize draw doesn't count as payment for lottery purposes.

Some activities may fit multiple definitions, so the law includes rules to determine their primary category (like classifying roulette as gaming). Contests offering prizes that don't meet any of those definitions become 'prize competitions,' which are not regulated as gambling but may still fall under consumer protection laws. Finally, while some speculative investments resemble gambling, they are regulated under financial services legislation rather than gambling laws.

The Act is designed for flexibility and long-term relevance. In practice, it establishes a framework for operational structure and discretionary decision-making. Specific details are further outlined in subordinate legislation authorized by this Act.

Regulations for specific gambling activities are determined by the risk level associated with the type of gambling/establishment. Factors considered include the potential for addiction or harm, the opportunity for significant financial gain or loss, and the risk of being used for money laundering or other crimes.

In a 2012 report, the Culture, Media, and Sports Committee outlined the distinction between 'Hard' and 'soft' gambling.⁵⁵ This distinction is based on the size of stakes, potential prizes, and the speed of the game. This classification

⁵² UK Gambling Act 2005 Schedule 2.

⁵³ UK Gambling Act 2005 Schedule 2.

⁵⁴ UK Gambling Act 2005 Section 14(2).

⁵⁵ Culture, Media and Sport Committee, 'The Gambling Act 2005: A Bet Worth Taking?' <<https://publications.parliament.uk/pa/cm201213/cmselect/cmcumeds/421/42103.htm>> accessed 5 April 2024.

system aligns with the primary goals of the Gambling Act, which include protecting children, vulnerable individuals, and preventing gambling-related harm. One key protective measure is restricting access to gambling activities, particularly for vulnerable groups. The stricter the ‘hardness’ of a gambling activity, the greater the restrictions on who can participate.

However, gambling has never been completely banned in Great Britain. In fact, lotteries have a long history of raising funds for the government.⁵⁶ Over the past 50 years, the UK’s gambling market has experienced significant liberalization, making it one of the most progressive jurisdictions globally. As a result, it boasts Europe’s second-largest gambling market.

Current laws allow for casinos, adult gaming centers, bookmakers, and bingo halls. Gaming machines are also permitted in establishments licensed to serve alcohol. Both a National Lottery and various private lotteries raise money for charitable causes. Remote gambling (online, by phone, etc.) is legal, and foreign operators can serve UK citizens with proper licensing and taxation.

In essence, almost all gambling forms are legal for adults 18 and older, with some lotteries and smaller-prize amusement machines available for those 16 and over. Gambling contracts are legally enforceable since 2005.⁵⁷

The main principle is that adults should be free to gamble as a leisure activity. As long as operators are regulated to ensure fairness, protect the vulnerable, and prevent underage gambling, the activity is generally permitted.⁵⁸

3.1.1.2 Belgium

In the face of the challenges presented by the digital age, Belgium, along with many other countries, has turned its focus to the issue of digital blind boxes, or loot boxes, within online games. These virtual containers with

⁵⁶ Historically, lotteries have served as a way to raise money for important causes. As early as the 16th century, they were used to fund military campaigns. Another famous example from 1753 helped finance the construction of the British Museum.

⁵⁷ UK Gambling Act 2005 Section 335.

⁵⁸ UK Gambling Act 2005 Section 1 and 22.

randomized in-game rewards have triggered concerns due to their similarities to gambling, especially regarding their potential impact on younger players.

In August 2018, Belgium made history by becoming the first country to classify loot boxes in online games as a form of gambling. This decision made selling loot boxes without a proper license a criminal offense, with potential civil and criminal penalties. The aim is to hold game developers and distributors accountable for including unlicensed loot boxes. The Belgian Minister of Justice provided the rationale: “Loot boxes are a tool within the gaming industry that specifically targets vulnerable groups like children and young adults. Their inherently risky nature makes regulating them and preventing their uncontrolled distribution necessary.” The Belgian Gambling Commission took a proactive role by publicly releasing a report in April 2018 detailing their investigation into loot boxes. This investigation sought to determine if loot boxes constituted gambling under Belgium’s 1999 Gambling Act. The Commission scrutinized loot boxes from four popular online games: Overwatch, Star Wars Battlefront II, FIFA 18, and Counter-Strike: Global Offensive, resulting in a summary of findings and recommendations.

While superficially similar to investigations by the UK, the Belgian report is distinct. It directly examines the fundamental nature of the loot box issue, rather than just analyzing how existing laws might apply. This is due to Belgium’s specific legal definitions of “gambling” and “games of chance.” As a result, the scope of the Belgian Commission’s investigation is broader and addresses a different range of concerns.

(1) Definition

Section 2(1) of the Gaming Act 1999 defines gambling as follows:

“a game of chance is any game whereby a bet of any kind that is placed leads to the loss of this bet by at least one of the players, or a win of any kind for at least one of the players or organizers of the game, and whereby chance may even be a secondary

element in the course of the game, indication of the winner or determination of the size of the winnings..”

Therefore, for any game to be considered a “game of chance” and subject to gambling regulations, it must meet all the elements established by Section 2(1) of the Gaming Act 1999. These elements are put in place to regulate gambling activities, control gambling establishments, and protect players.⁵⁹

To be considered gambling under Belgium’s Gaming Act 1999, an activity must meet four key criteria. Firstly, it must fundamentally be a ‘game,’ meaning it functions with a set of rules, a way to play, and a win condition. Secondly, there must be a ‘wager’ involved. This stake can be traditional money, but also extends to include in-game currency or virtual items with the potential for real-world value. Thirdly, the game’s outcome must directly result in one party winning the stake and another losing it. This creates a sense of risk and consequence. Finally, and most crucially, an element of chance must be involved. The outcome cannot be predetermined entirely by skill, with some factor outside the player’s control determining the winner or loser, or the degree of the reward.

3.1.1.3 Japan

Japan has a curious relationship with gambling. While most forms like casinos are banned, a thriving industry exists around “gacha” and similar games of chance. “Gacha gacha” (ガチャガチャ), pronounced ga-cha-ga-cha) is essentially the Japanese term for what’s more commonly known internationally as a “blind box.” Both concepts involve capsule vending machines that dispense a surprise. The excitement lies in the mystery of what lies within the capsule – buyers won’t know what toy or figure they’ve acquired until they open it. These surprise collectibles often belong to a series or collection, encouraging collectors to try and complete the set. Unlike high-stakes gambling, gacha offers a more casual experience centered on collecting miniature toys and figurines dispensed from capsule machines.

⁵⁹ Peter Naessens (n 34) 8-12.

These machines, nicknamed “gachapon,” are a common sight in arcades, game centers, and public spaces across Japan.

Gambling laws in Japan are primarily stipulated in the Penal Code, which generally prohibits gambling activities. The law does not define the legal definition of gambling, but the term is understood as “an act where more than two persons bet on an outcome of a contest of chance to contend for a prize in the form of property or asset”⁶⁰ by the definition given by Tokyo High Court.⁶¹ This means the outcome must be unpredictable and beyond the contestants’ control, even if some skill is involved. The element of “luck” in Japanese gambling law does not need to be the main factor determining the outcome of a game in order for it to be considered a game of chance. If luck is a component of the outcome, to any degree, regardless of whether the outcome also depends on the skill of the player, the game is considered a game of chance and therefore gambling under the law. The Japanese Supreme Court ruling, which is used as the standard for considering luck in Japanese gambling law, used the term “outcome of a contest of chance. “Interestingly, court rulings have classified games like Go (igo), Mahjong, and Japanese chess (shogi)⁶² as gambling due to the element of chance inherent in their outcomes.

For the definition of “prize”, the Penal Code doesn’t define the term “prize,” but it can be inferred from the judgment⁶³ that a prize must be “something of value” which is not necessarily money, but something that can be exchanged for money, property, assets, or even the original stake itself.

Some officially operated games are also legal. Article 185 of the Penal Code explicitly permits specific forms of gambling overseen by the government or government-related entities. These legal exceptions include:

⁶⁰ Tokyo High Court, 28 November 2006.

⁶¹ Hitoshi Ishihara, ‘JAPAN’ in Carl Rohsler (ed), *The Gambling Law Review* (Clare Bolton 2021) 255 <https://www.amt-law.com/asset/res/news_2021_pdf/publication_0023219_ja_001.pdf> accessed 28 March 2024.

⁶² *ibid.*

⁶³ *ibid.*

a) Public Sports Betting: Horse racing, bicycle racing, motorboat racing, and motorcycle racing all fall under this category.

b) National Lottery: Participating in the government-run lottery is legal.

c) Football Pools: Similar to lotteries, government-run football pools are permitted.

It's important to note that only entities with proper licenses, typically local governments or government-related corporations, can operate these authorized gambling activities.

Article 185 of the Penal Code also excludes “something for momentary amusement” from the gambling definition. This creates a legal gray area for activities where the prize has little monetary value and the focus is on the act itself, for example, simple carnival games with small prizes. Cash, no matter how little, doesn't qualify as “momentary amusement”.⁶⁴ As a result, legal gambling in Japan is strictly limited. According to current regulations, all legal gambling in Japan must be facilitated by licensed government entities. Past court rulings consistently uphold this principle, making it clear that private gambling operations remain illegal.

Additionally, Article 186, Section 2 of the Penal Code specifically targets individuals who run gambling venues for profit or organize groups of habitual gamblers. It's interesting to note that the law defines “running a place for gambling” broadly. It doesn't necessarily require a physical location or players gathering in person.⁶⁵ As long as someone is hosting and profiting from unauthorized gambling activities, they can be held accountable under this law. The crime under Article 186 (2) also has an additional element that it must be an act committed with the “intent to gain commercial profit.”, this mean obtaining commercial benefits in any form, including but not limited to illegally collecting gambling fees, commissions, or other forms.

⁶⁴ *ibid.*

⁶⁵ *ibid.*

For penalties, Article 185 states that gambling is generally illegal. An individual caught gambling faces a fine or a petty fine of not more than ¥500,000 (around \$4,600 USD or around \$120,000). However, there is an exception for “something for momentary amusement” from its definition of gambling. This creates a legal gray area for certain activities. Additionally, Article 186, (2) of the Penal Code stipulate a tough stance against unauthorized gambling operations. Individuals caught running a gambling venue for profit or organizing groups of habitual gamblers faces imprisonment for up to 5 years.

Section 187 (1) to (3) is about the illegal lottery; (1) Selling lottery tickets without proper authorization carries a penalty of imprisonment with forced labor for up to 2 years or a fine of up to 1,500,000 yen, (2) Acting as an intermediary for the unauthorized sale of lottery tickets carries a penalty of imprisonment with forced labor for up to 1 year or a fine of up to 1,000,000 yen, (3) The shipping or receiving of lottery tickets without authorization, except in cases outlined by Sections 187 (1) and 187 (2), is punishable by a fine of up to 200,000 yen or an adjusted fine for minor offenses.

Thus, the structure of Japanese gambling laws reveals a clear priority on limiting the potential for commercial profits derived from gambling activities. The focus lies in preventing organized gambling operations and maintaining tight control over authorized activities like lotteries.

3.1.1.4 People’s Republic of China

China’s approach to blind box regulation reflects a growing concern about the potential negative impacts of this popular consumer trend. The primary focus lies on protecting vulnerable demographics, particularly children. This safeguards against impulsive spending and the potential for addiction-like behavior.

While gambling is generally prohibited in Mainland China, the legal definition remains unclear. Authorities rely on discretion to determine what activities fall under this umbrella.

Typically, gambling is understood as paying to participate in an activity with an uncertain outcome, with the primary goal of winning money or something of value. Three key elements are often considered: payment, chance, and

prize. However, these elements can manifest in various ways, making specific determinations case-dependent and heavily influenced by government policy.⁶⁶

Any activities related to it can lead to consequences, ranging from administrative penalties for minor offenses to even criminal charges for serious cases. While the legal landscape surrounding gambling hasn't seen any significant changes in the past year, there has been a noticeable shift in enforcement efforts by the authorities. The Ministry of Public Security, in particular, has stepped up its efforts to crack down on all forms of gambling. This renewed focus on enforcement isn't just limited to traditional gambling activities. The authorities are paying close attention to, and implementing stricter regulations for, newer forms of gambling that have emerged in recent years. This targeted approach aims to ensure that these new forms of gambling fall under stricter regulatory control.⁶⁷

Chinese authorities, particularly the Ministry of Public Security, have significantly intensified enforcement efforts to combat gambling across the board. This renewed focus extends not only to traditional gambling activities but also to new and emerging forms that have emerged in recent years.

The seriousness of this crackdown is highlighted by a recent high-profile case. On July 18, 2023, local authorities successfully resolved the "first case of virtual currency" related to cross-border online gambling. This case involved a staggering amount of money - up to RMB 400 billion (equivalent to CNY 400 billion). Notably, the gambling operation utilized overseas servers and relied entirely on virtual currency for transactions.

⁶⁶ Tracey Tang, 'A Middle-ground Approach: How China Regulates Loot Boxes and Gambling Features in Online Games - Gaming - China' (mondaq, 5 April 2024) <<https://www.mondaq.com/china/gaming/672860/a-middle-ground-approach-how-china-regulates-loot-boxes-and-gambling-features-in-online-games>> accessed 5 April 2024.

⁶⁷ Charles Li, Vivian He and Kaiying Wu, 'Gaming Law 2023 China Trends and Developments' (*Chambers and Partners*, 28 November 2023) <<https://practiceguides.chambers.com/practice-guides/gaming-law-2023/china/trends-and-developments>> accessed 28 March 2024.

To effectively target these new forms of gambling, authorities rely on specific characteristics that distinguish them from lawful games. Here's what sets illegal gambling apart:

(1) Two-Way Money Flow:

Unlike lawful games with limited real-world value conversion options, illegal gambling activities often establish a closed-loop system. Players can exchange real money for virtual currencies or props usable within the game, and potentially convert those virtual items back into something of value outside the game. This two-way flow of money with potential real-world rewards raises red flags.

(2) Mechanisms for Winning:

Games deemed illegal gambling often include features that allow players to directly draw benefits or winnings from the game itself. This could involve winning additional virtual currency, prizes, or other in-game rewards that can be exchanged for something of value outside the game.

(3) Disguised Transactions:

Authorities are particularly vigilant about disguised transactions. If the operator offers services like trading game points for real money or exchanging virtual currencies for physical products (even in a disguised form), it raises suspicion of illegal gambling activities.

(4) Financial Thresholds:

In addition to these characteristics, the amount of money involved can also be a deciding factor. Games that allow players to exchange large sums of real-world money for in-game items (like the aforementioned threshold of RMB 300 in Beijing) are more likely to be classified as illegal gambling.

By identifying these characteristics and cracking down on high-profile cases, Chinese authorities aim to protect citizens from potential financial harm and maintain a stricter regulatory environment for traditional and new gambling activities.

3.1.2 Legality of Blind Box

3.1.2.1 The United Kingdom

In the UK, a significant point of debate has surrounded digital blind boxes, also known as loot boxes. These virtual boxes contain randomized rewards within video games, with their contents unknown to the player until after purchase. This lack of transparency and the potential for valuable rewards have raised concerns about their similarities to gambling, especially for younger players. The debate continues about whether loot boxes should fall under stricter regulation.

Currently, there is no case law or definitive legal ruling on loot boxes in general or on the matter in the United Kingdom. However, the Gambling Commission published a Discussion Paper in 2016⁶⁸ and a Position Paper on loot boxes in online games in 2017,⁶⁹ which outlined their position and perspective, along with important insights. Nevertheless, there is still some ambiguity and legal uncertainty surrounding this issue.

The Gambling Commission and the UK gambling authorities concluded that loot boxes in online games do not constitute gambling under the law. However, loot boxes in online games do have characteristics that could lead to problems. As a result, this issue is still being debated and studied, with no formal regulatory measures in place for loot boxes in online games. The Gambling Commission has stated that purchasing loot boxes in online games does not fall within the definition of gambling that requires registration under the Gambling Act 2005. This is because virtual items in online games have no real-world economic value.⁷⁰ The Commission reached this conclusion despite acknowledging that the act of paying (wagering) for a chance to win a prize (in-game) that is determined by chance is similar

⁶⁸ 'Virtual Currencies, eSports and Social Gaming – Discussion Paper' (UK Gambling Commission, 2016) <<https://www.gamblingcommission.gov.uk/about-us/page/virtual-currencies-esports-and-social-gaming-discussion-paper>> accessed 5 April 2024.

⁶⁹ *ibid.*

⁷⁰ 'Loot Boxes Within Video Games' (UK Gambling Commission, 24 November 2017) <<https://www.gamblingcommission.gov.uk/news/article/loot-boxes-within-video-games>> accessed 5 April 2024.

to a ‘game of chance’ under the law and is considered a game of chance for the opportunity to win a prize.⁷¹

However, loot boxes that can be traded are seen as having a higher risk under UK gambling law than regular loot boxes.⁷² Players can exchange the rewards they get from this type of loot box with other players, either inside or outside the game system. For this type of loot box, which is still unclear and legally uncertain, it is considered that if the rewards obtained from the loot box can be sold, exchanged, or used to bet on a third-party marketplace, it means that the rewards obtained from the loot box can have a monetary value. This means that the rewards obtained from the loot box will become economically valuable and fall within the definition of ‘prize’ under Section 6(5), making playing this type of loot box a ‘game of chance’ under the law.

Following this interpretation, it stands to reason that physical blind box, where the rewards can be traded in a secondary market, would also fall under the definition of ‘prize’ under Section 6(5) of the UK Gambling Act. If the items gained from a physical blind box hold tangible value through the ability to be resold or traded, they acquire monetary worth. This economic value then classifies the act of buying the blind box as a ‘game of chance’ under the law, with the potential for regulation as gambling.

Furthermore, high-value prize blind boxes pose a challenge when compared to the content of the lottery in the UK Gambling Act 2005. The Act defines gambling activities as those that combine chance and payment for the opportunity to win a prize. This definition encompasses a wide range of lottery-like schemes, but the prize blind boxes present a unique challenge. Participants in these schemes pay for a box with unknown contents. The excitement lies in the possibility of winning a high-value prize, like gold or a car. This scenario shares key characteristics with lotteries as defined by the Act. Just like lottery tickets, chance dictates the

⁷¹ ‘The Immersive and Addictive Technologies Inquiry’ (UK Parliament) <<https://committees.parliament.uk/work/6339/immersive-and-addictive-technologies-inquiry/>> accessed 5 April 2024.

⁷² ‘Virtual Currencies, eSports and Social Gaming – Discussion Paper’ (n 68).

outcome in prize blind boxes. This dominance of chance aligns these boxes with activities classified as gambling under the Act. Purchasing a prize blind box can be viewed as paying for an opportunity to win, similar to buying the lottery ticket. This structure mirrors how lotteries operate.

However, the UK law offers a loophole. “Lottery-like schemes” without a payment element are exempt from regulation. In simpler terms, if customers simply purchase goods at their normal price and are entered into a prize draw as a bonus, it’s considered a “free prize draw” and not gambling.

For prize blind boxes to qualify as a free prize draw, the reward inside the box must have a minimum value equal to the box’s selling price. This ensures the customer receives at least the value they paid, even if they don’t win the main prize. If the reward falls below the selling price, the scheme transforms from a “free prize draw” into an illegal lottery. In essence, prize blind boxes in the UK walk a fine line – their legality depends on a guaranteed minimum value for the reward that matches the box price. This minimum value ensures they fall under the exemption for free prize draws and avoids regulation under the Gambling Act 2005.

3.1.2.2 Belgium

For the loot boxes in online game, The Belgian Gambling Commission considers two aspects when evaluating whether something constitutes a game: the core game itself and the loot boxes within it.

(1) Game

The general definition of a game can encompass either competition between multiple players or a single player aiming to achieve a specific objective. This includes solitary play against a machine.⁷³ In the case of loot boxes itself, the Commission views them as a form of play between the player and the game provider. Each loot box opening has a distinct outcome, effectively determining a win or loss for that specific “round” of play. Furthermore, active participation by the player

⁷³ K. Andries, N. Carette and N. Hoekx, ‘Kansspel’ in *Recht en Onderneming* (Recht en onderneming 2006) 79 [K. Andries, N. Carette and N. Hoekx, ‘Game of Chance’ in *Law and Business* (Nederlands 2006) 79].

is required to engage with loot boxes. Therefore, under the Belgian Gambling Act, loot boxes themselves qualify as games.

In the case of physical blind boxes, participation inherently creates a ‘play’ scenario between the buyer and the seller of the box. A physical blind box offers a distinct outcome, with contents representing either a win or loss depending on the perceived value. Active participation by the buyer is required to engage with the purchase and opening of a physical blind box. Due to these factors, under the Belgian Gambling Act, physical blind boxes themselves would likely qualify as games.

(2) Wager (Bet)

Traditionally, gambling has been associated with wagers using real money. For loot box, the Belgian Gambling Commission has established a key point regarding in-game purchases and gambling regulations: the type of currency used doesn’t necessarily determine if something is a bet. Even virtual currency obtained within a game can be considered a wager if it has value. This value is defined by its “usability” – essentially, how useful or desirable the item the players acquire with the virtual currency is.⁷⁴ If the players spend money (real or virtual) on something the players find valuable in the game, such as a powerful weapon or a rare character skin, then it might be considered a bet under these regulations. This means that in-game purchases can be scrutinized based on the value they provide and the potential gambling element involved.

Previously, physical blind boxes haven’t been considered gambling due to their fixed price for a random item. However, the Belgian perspective on “usability” as a factor introduces a new wrinkle. If the contents of a blind box hold significantly different values – with some items being highly desirable and others practically worthless – then the argument could be made that the purchase becomes a bet.

For example, consider a toy blind box series featuring figurines of popular cartoon characters. While some characters might be common and have

⁷⁴ *ibid* 249.

minimal value, others might be rare and highly sought-after by collectors. Under the Belgian lens, the fixed price for a blind box could be seen as a wager on the chance of obtaining a valuable figurine. This highlights a potential grey area for physical blind boxes, particularly those with a vast disparity in value between potential items.

(3) Chance of Wins and Losses

The Belgian investigation focuses on whether players have a chance of winning or losing value when buying loot boxes. This revolves around the received item's worth compared to the box's cost. The law requires "a win of any type" for someone involved (player, seller, or organizer). This win can be monetary or non-monetary, like a valuable item or bonus. The concept of "win" is broadly interpreted, and the type or size of the win doesn't matter. Even items labeled as "gifts" or "rewards" can be considered wins. Furthermore, the inability to convert game currency back to real money doesn't exclude the transaction from gambling regulations.

For example, even if the player does not receive a monetary reward, they can still be considered to have "won" if they receive a valuable item. Conversely, if the player receives an item that is of low value or that they do not want, they can be considered to have "lost." This means that regardless of whether the prize or reward is monetary or non-monetary, any type of blind box (such as a digital loot box in a video game or a physical blind box containing a collectible toy) has the potential for both winning and losing.

(4) Luck

The Belgian Gaming and Betting Act significantly impacted the definition of games of chance within the country. Previously, the focus was on chance being the dominant element (over 50%) in a game to classify it as gambling. This distinction separated games of skill from games of chance. However, the act shifted towards a broader interpretation.

Under the new interpretation, chance can be a secondary element that still qualifies an activity as gambling. This means that even if skill plays a role, the presence of chance in determining the winner or the size of the prize can be enough. For example, when players purchase a loot box, the players don't know

what item they will receive. The outcomes, the specific items those players acquire, are determined by chance, not by the player's skill level.⁷⁵ This element of chance, even though it might not be the primary driver of the game itself, falls under the Belgian definition of gambling. Similar to loot boxes, traditional blind boxes offer a surprise item for a fixed price, which involves luck.

Thus, any type of blind box can be illegal under Belgium law because the mechanism of blind boxes have all four of the mentioned elements. They are considered a game of chance and falls within the definition provided by the Gaming Commission and other relevant agencies under the provisions of the Gaming Act 1999

3.1.2.3 Japan

The Japanese gambling law does not specifically define the term “gambling.” However, based on the guidelines set forth in the judgments, “gambling” under Japanese law can be understood as an act in which two parties bet on an outcome that depends on luck, with the prize being a valuable asset.

While the Japanese Penal Code doesn't offer a precise definition of “prize” in the context of gambling, legal judgments suggest that it must be something that holds value. This value doesn't have to be strictly monetary; it can simply be something that can be traded or sold for money, possessions, or even just the original cost of the gamble. Therefore, if the contents of a blind box have the potential to be sold or exchanged for something of value, the act of obtaining them could fall under the legal definition of gambling.

However, the case of blind boxes can also be considered under the above principles of betting and winning or losing bets. Based on the judgments, “betting for a prize in the form of property or assets” is only complete if there is a winner and a loser, with the winner receiving and the loser losing the prize in the form of property or assets. If it appears that one of the parties to the bet does not risk losing property or assets, then that party cannot be considered to be “betting for a prize in the form of property or assets.”

⁷⁵ *ibid.*

The legal status of blind boxes might fall under the “momentary amusement” exemption from gambling laws. This situation is mirrored by the established pachinko and pachislot industry in Japan. These hugely popular games are often viewed by the public as a form of gambling, but they take advantage of a loophole to avoid regulation. Pachinko and pachislot machines dispense balls or tokens as prizes, which can be exchanged for small gifts within the parlor itself. However, there’s a crucial twist: these gifts can then be sold for cash at entirely separate exchange shops located near the parlors. Despite operating independently, the pachinko parlors ultimately benefit by buying these exchanged prizes back through intermediaries. This complex system, with its indirect cash out method, has been accepted for decades as falling outside the scope of Japanese gambling laws. The key elements here are that pachinko and pachislot only award small, non-cash prizes, similar to the potential “momentary amusement” aspect of gacha or blind boxes, and the separate businesses involved create distance from a single entity running a gambling operation.

(1) Consumer Protection Law

When it comes to regulating blind boxes in Japan, the Consumer Protection Law plays a more prominent role than the gambling law. All the current regulatory measures in Japan primarily stem from the Consumer Protection Law, with the gambling law acting as a secondary consideration.

The most crucial Consumer Protection Law for blind box regulation is the Act against Unjustifiable Premiums and Misleading Representations (APM Law). This law prohibits businesses from engaging in unfair trade practices, such as making false or misleading claims to consumers.

(2) Act against Unjustifiable Premiums and Misleading Representations (APM Law)

The APM Law was enacted in 1962 (Act No. 134 of May 15, 1962) with the aim of protecting consumers from misleading or deceptive advertising, labeling, and information. The following sections of the APM Law are particularly relevant to blind boxes:

Article 2(3) states that, in this law, a “premium” refers to anything of economic value (goods, money, etc.) offered by a business to a customer in connection with a purchase. This is done to entice the customer to buy, regardless of how the offer is structured (direct, indirect, lottery, etc.). Article 3 of the Act prohibits businesses from offering premiums (such as prize blind boxes) that are “unjustifiably large” in relation to the value of the product being purchased. This provision is designed to prevent businesses from using excessive premiums to lure consumers into making purchases they would not otherwise make. Article 4 prohibits businesses from making false or misleading representations about the contents of products. This provision is designed to ensure that consumers have accurate information about the products they are purchasing. In the context of the Japanese Act against Unjustifiable Premiums and Misleading Representations (APM Law), a “premium” is any gift or other special privilege that is offered in conjunction with the purchase of goods or services.

An example of this in Thailand would be a promotion where customers who purchase a green tea beverage can enter a code found under the cap for a chance to win one million baht. Under Japanese law, this would be considered a premium under the APM Law. Another example relevant to many countries, including Japan, is the inclusion of collectible toys in pre-packaged meals aimed at children. While the toys themselves might have little intrinsic value, they can entice parents to purchase the meal for their children, potentially swaying their purchasing decision. The APM Law aims to ensure these premiums are offered fairly and don’t mislead consumers about the true value of the underlying product or service.

In accordance with the authority of Article 4 of the Act against Unjustifiable Premiums and Misleading Representations (APM Act), the Prime Minister issued the Fair Trade Commission Announcement No. 3 on March 1, 1977, entitled “Notification on Premium Offers by Lotteries or Prize Competition” (also known as the “Prize Notice 201”).

The announcement prohibited the sale of certain types of random card sets in 1977, such as sports card sets that required consumers to purchase

random packs of cards until they had a complete set.⁷⁶ The complete set could then be exchanged for a prize. The following are some of the key points of the announcement:

Article 1 – In this announcement, “prize” means anything that the recipient of the premium will receive from the provider of the premium in one of the following ways: (a) through a lottery system; and (b) through the satisfaction of quality or accuracy conditions for a certain action.

Articles 2-4 – “...the maximum value of a premium that is used as a prize must not be more than 10 times the value of the main product or service...”

Article 5 – Prohibits the use of premiums in the form of a lottery system with specific conditions set by the provider of the premium, such as the collection of cards, pictures, or symbols.

In sum, to protect young consumers from manipulative tactics in the late 1970s card collecting craze, Japan’s “Prize Notice” banned practices that encouraged excessive spending. These included using card set completion as a prize trigger, limiting the value of prizes to 10 times the product cost, and prohibiting lottery-style card collecting for prizes based on specific character combinations. This aimed to create a fairer market by preventing gambling-like elements and excessive purchases driven by the chance of getting rare cards. In addition to controlling premiums in the form of a lottery, the Prime Minister’s announcement also defines and sets control measures for premiums in the form of requiring players to collect cards, pictures, symbols or objects. Anything from purchasing goods or services, in order to collect and redeem premiums from the seller or provider of such goods or services. While the excerpt doesn’t directly address prize blind boxes, it offers valuable insights that could be applied to their regulation. Japan’s “Prize Notice” aimed to curb manipulative tactics in card collecting, particularly those that encouraged excessive spending. A key element was limiting the value of prizes to 10 times the product cost. This principle

⁷⁶ Sebastian Schwiddessen, ‘Loot Boxes in Japan: Legal Analysis and Kompu Gacha Explained’ (Lexology, 2 August 2018) <<https://www.lexology.com/library/detail.aspx?g=9207df10-a8a2-4f67-81c3-6a148a6100e2>> accessed 28 March 2024.

could be applied to prize blind boxes to prevent them from becoming a gateway to excessive spending fueled by the hope of acquiring a high-value prize. The Notice also prohibited lottery-style elements, suggesting similar restrictions could be considered for blind boxes that rely heavily on chance to determine prize value.

3.1.2.4 People's Republic of China

While China strictly outlaws gambling, some aspects of blind boxes share concerning similarities. Blind boxes lack a direct way to convert them back to cash, but a secondary market exists where users can potentially resell rare items for a profit. This creates a limited two-way flow of money, similar to some illegal gambling activities. Additionally, some blind box marketing could be seen as disguised gambling if it emphasizes the potential to win valuable figures for resale.

However, key differences exist. Blind boxes offer predetermined sets of items with varying rarities. The surprise element is the main draw, not a system designed for winning specific prizes. Furthermore, blind box purchases typically involve smaller amounts of money compared to the financial thresholds associated with illegal gambling. Thus, blind boxes currently fall outside the legal definition of gambling in mainland China.

While blind boxes might not fall under the strict definition of gambling in Chinese law, they do present a potential risk of addiction, particularly for younger audiences. To address these concerns and promote responsible consumption, the Chinese government issued the Shanghai regulations for blind boxes.

The Shanghai Municipal Administration for Market Regulation (Shanghai AMR) issued the “Compliance Guidelines on Blind Box Business Activities in Shanghai” on January 14, 2022.⁷⁷ These guidelines, while not legally binding, aim to protect consumers and promote responsible business practices in the blind box market

⁷⁷ 上海市市场监督管理局关于印发《上海市盲盒经营活动合规指引》的通知2022 <<http://scjgj.sh.gov.cn/210/20220114/2c9bf2f67e29b4b3017e5765fe447e2e.html>> 访问 28 March 2024 [Notice of the Shanghai Municipal Administration for Market Regulation on the Issuance of the “Compliance Guidelines on Blind Box Business Activities in Shanghai” 2022 <<http://scjgj.sh.gov.cn/210/20220114/2c9bf2f67e29b4b3017e5765fe447e2e.html>> accessed 28 March 2024].

within Shanghai. The guidelines offer a framework for companies to comply with existing laws related to consumer protection, children's rights, and general criminal offenses. This initiative represents a significant step towards addressing potential negative impacts associated with blind boxes, particularly for younger demographics.⁷⁸

3.2 Control Measures

3.2.1 The United Kingdom

Generally, the UK Gambling Commission holds the authority to issue licenses, ensuring businesses comply with the Gambling Act 2005. These licenses are essential for operating casinos, online gambling platforms, and other approved gambling establishments. At present, there is no specific legislation or case law governing blind boxes or similar matters in the United Kingdom. The Gambling Commission has only issued reports discussing the topic, but there is still ambiguity and uncertainty about how the law applies.

3.2.2 Belgium

One of the core objectives of the Belgian Gambling Act of 1999 (amended 2019) is to protect players, especially children, young people, and vulnerable players. This emphasis is evident throughout the Act's various provisions, which establish different control measures for various gambling formats. These measures aim to be appropriate for the specific game type.

For the case of the digital loot box, based on the investigation report by the Belgian Gaming Commission, loot boxes (where players pay to participate) offered in online games within Belgium without a license constitute a violation of the

⁷⁸ Leon Y. Xiao, 'Blind Boxes: Opening Our Eyes to the Challenging Regulation of Gambling-Like Products and Gamblification and Unexplained Regulatory Inaction' (n 1).

law.⁷⁹ Providing illegal games of chance and participating in their organization are criminal offenses. The Commission investigated four popular online games and found all of them to be offering illegal loot boxes. Therefore, until a license application is submitted to the Commission, all service providers must remove any purchasable loot box systems from their games to comply with the Belgian Gambling Act of 1999. Failure to do so will result in criminal prosecution with potential penalties of imprisonment for up to 5 years and a fine not exceeding €800,000 (approximately US\$882,000 or \$ 3,300,000) for the first offense. These penalties are doubled for offenses involving individuals under 18 years old.

Furthermore, while there are no current legal cases involving physical blind boxes in Belgium, the legal definition of ‘games of chance’ suggests that physical blind boxes would also fall under the jurisdiction of gambling laws. Since the contents of a physical blind box are unknown at the time of purchase, they possess the inherent elements of chance, stake (the purchase price), and the potential for a prize (the contents). Thus, should the law be enforced, sellers of physical blind boxes could potentially face the same penalties as those offering unlicensed digital loot boxes.

To address this, the Commission wrote a recommendation to guide the stakeholders.⁸⁰ Firstly, the regulatory agencies should focus on raising awareness about the potential issues surrounding loot boxes, especially targeting parents and minors. This will promote vigilance and help prevent gambling-related problems. Additionally, it’s crucial to support academic research into loot boxes. This will build knowledge, promote social awareness, and empower consumers to identify and report problematic cases to the Commission. The Commission further recommends the establishment of a specific license type along with regulatory criteria focused on games of chance within the online gaming sphere. Enacting legislation that prohibits minors from purchasing or engaging with games containing loot boxes that meet the legal

⁷⁹ Section 4(1) “...No person shall, in any form or in any place, directly or indirectly, provide gambling services without a license from the Commission beforehand. The criteria and exceptions shall be as prescribed by this Act...”

⁸⁰ Peter Naessens (n 34) 17 and 18.

definition of games of chance is essential. Implementing age verification measures tied to the purchase of codes and top-up cards for online gaming platforms is also needed, with minors restricted from purchasing such items for games deemed inappropriate for their age.

Beyond these regulatory actions, it is important for licensors (such as Disney and FIFA) to thoroughly evaluate licensing requests, ensuring activities uphold fair trade practices and remain in full compliance with the law. Payment platform providers should synchronize age verification for payments with existing game-specific age restrictions. Finally, game developers and providers have a responsibility to provide transparent drop rates, allow fair adjustment of drop rates through a controlled system, disclose player data to the Commission upon request, institute caps on loot box spending, ensure loot boxes don't create unfair gameplay advantages, and clearly label games containing gambling elements.

3.2.3 Japan

3.2.3.1 Prohibition of “Kompu Gacha” Mechanisms by the National Consumer Affairs Agency (CAA)

“Kompu Gacha” or the “Complete Gacha” is a specific type of blind box or gacha monetization system used in some video games, primarily popular in Japan until it was banned in 2012. The mechanism is a multi-level digital gacha systems, where players spend in-game currency or real money on a random chance to win virtual items. Unlike regular gacha where the buyers aim for a single desirable item, Kompu Gacha requires collecting a set of items before the buyers can unlock the truly valuable prize. These sets typically consist of several common items, a few rare ones, and finally, one extremely rare or legendary item.⁸¹

Kompu Gacha was a problematic system because of its unpredictable costs. Since players were essentially gambling on random items with undisclosed drop rates, they could sink a significant amount of money without ever acquiring the desired prize. This lack of transparency, coupled with the pressure to

⁸¹ *ibid.*

complete the set for the truly valuable reward, created a potentially manipulative situation that encouraged excessive spending.

In 2012, the CAA recognized Kompu Gacha as a form of gambling that exploited players. They deemed it a violation of truth-in-advertising laws due to the lack of transparency and the potential for excessive spending. As a result, Kompu Gacha was banned in Japan. As a result, the service providers at that time had to withdraw all Kompu Gacha systems from the games they provided. However, the CAA did not extend its protection to other types of blind boxes beyond the multi-tier gacha boxes, which were the majority of gacha boxes in the game market. Therefore, other types of blind boxes were still able to operate normally until now.

3.2.3.2 Self-Regulation by Private Sector

To further address concerns and potentially avoid stricter regulations from the CAA, the Japanese gaming industry enacted new self-regulation measures for standard gacha mechanisms.

“Big 6” console makers, took significant steps towards self-regulation of standard gacha mechanics. These measures, implemented in 2012, aimed to create a more transparent and responsible gaming environment. These applied to all games, regardless of developer, on the platforms controlled by the “Big 6” console makers.⁸²

(1) Addressing Transparency Concerns

A key focus was on transparency. Developers were now required to disclose the odds of obtaining specific items through gacha pulls. This addressed a major criticism of gacha systems, where players often felt misled about their chances of winning coveted prizes. By clearly displaying the drop rates, players could make informed decisions about their in-game spending.

(2) Combating Real-Money Trading

Another crucial area of self-regulation involved combating real-money trading of virtual items. This practice, where players buy or sell virtual items with real-world currency, can create an unhealthy and potentially illegal market. To

⁸² *ibid.*

counter this, the industry implemented measures to track virtual items. Unique identifiers were assigned to each item, allowing developers to monitor their movement and identify suspicious transactions. Additionally, restrictions were placed on trading with new users. A waiting period was introduced before virtual items could be exchanged, making it more difficult for players to engage in illicit activities.

(3) Banning Similar Mechanics

Recognizing the potential for circumventing the kompu gacha ban, the regulations also prohibited mechanisms that functioned similarly. This included systems like “bingo gacha,” where completing a bingo-like grid granted players specific items. By extending the ban beyond just kompu gacha, the industry aimed to close loopholes and maintain a fairer playing field.

(4) Establishing an Industry Committee

Recognizing the need for ongoing monitoring and adaptation, an industry committee was established. This committee comprised representatives from social game operators, developers, and even consumer groups. The committee’s purpose was multifaceted. It was tasked with creating detailed social gaming guidelines that outlined best practices for responsible monetization. Additionally, they aimed to offer player support through consultation counters, providing a platform for players to address concerns or seek help. Finally, the committee was instrumental in launching public awareness campaigns to promote safe mobile gaming practices, educating players about potential risks associated with gacha mechanics and encouraging responsible in-game spending habits.

These self-regulation measures implemented by the Japanese gaming industry signified a significant shift. By prioritizing transparency, combating real-money trading, and establishing a collaborative oversight body, the industry aimed to restore public trust and navigate a future where gacha mechanics could coexist with responsible practices.

3.2.4 People’s Republic of China

Compliance Guidelines on Blind Box Business Activities in Shanghai, effective as of January 14, 2022, establish a framework for blind box operations within

the city. They aim to ensure transparency, fairness, and adherence to existing legal regulations concerning consumer protection, product quality, and marketing practices.

The guidelines define “blind box business activities” as a specific sales model.⁸³ Within legal operation boundaries, these activities involve the consumer participating in a random “draw” to determine the exact product or service they receive. This draw occurs through various channels like the internet, physical stores, or vending machines. However, unlike traditional purchases, the consumer remains unaware of the specific model, style, or service content beforehand.

This broad definition highlights the diverse nature of blind box products and their accessibility. While commonly associated with collectible toys or food items, the definition encompasses a wider range. For example, a situation in Sichuan Province gained public attention where live animals were offered as blind box “pets,” demonstrating the potential extremes of this sales method.⁸⁴

The guidelines offer clear recommendations for businesses operating in this growing market to regulate this industry and ensure responsible business practices while protecting consumer rights. The key recommendations are as follow.

3.2.4.1 Product Restrictions

Article 7 Blind box business activities shall comply with relevant laws, regulations and rules, and are generally carried out in the fields of daily consumption, literature, art and entertainment. Products that are clearly prohibited from sale or circulation by laws and regulations must not be sold in blind boxes. Special foods, medicines, medical devices, toxic and hazardous items, flammable and explosive items, etc. that have strict requirements on sales

⁸³ Article 2.

⁸⁴ 四川省邮政管理局, 四川局召开全省邮政管理系统监管应急及舆情应对线上研讨会 2021 <http://www.spb.gov.cn/xw/dtxx_15079/202105/t20210531_3916722.html> accessed 5 April 2024. [Sichuan Provincial Postal Administration, Sichuan Bureau held an online seminar on the emergency regulatory response of the provincial postal management system and responding to public opinions 2021] <http://www.spb.gov.cn/xw/dtxx_15079/202105/t20210531_3916722.html> accessed 5 April 2024.

qualifications, storage, transportation, and usage conditions must not be sold in blind boxes. Live animals may not be sold in blind boxes.

Content: Selling illegal, hazardous materials, or products requiring specialized handling (storage, transport, etc.) through blind boxes is strictly prohibited. Live animals are also off-limits.

Article 8 The actual value of blind box goods should be basically equivalent to its selling price. The difference in cost and price between ordinary products and hidden products should not be too large. If the same operator sells the same product through blind box format and public method at the same time, the selling price in blind box format should not be higher than the selling price in public method. Blind box operations should adhere to small-value, non-cash attributes, and the selling price of a single blind box product is generally no more than ¥200 Renminbi.

Value for Money: The Guidelines encourage pricing blind boxes based on their actual content value. The cost difference between “normal” and “hidden” items (rare rewards) should be minimal. Additionally, blind boxes should not be priced higher than the same product sold traditionally. Single blind boxes are capped at ¥200 Renminbi (around US\$31.50 or ฿1000 Thai Baht) to promote responsible spending.

3.2.4.2 Transparency and Fairness

Article 9 Blind box operators should publicly disclose key information such as product types, box drawing rules, product distribution, product quantity, hidden money extraction probability, product value range, the number of times each series can be drawn, and amount limits in a conspicuous manner, ensuring consumers know before purchasing.

Probability Disclosure: Blind box marketing often hinges on the allure of rare and valuable hidden items. To ensure transparency and informed decision-making by consumers, the guidelines mandate clear and readily accessible information on the probability of winning different rewards. This includes the creation

and retention of detailed records of opening results for at least three years.⁸⁵ This allows verification that the actual distribution of rewards aligns with the advertised probabilities.

Article 16 Blind box operators shall not illegally use blind boxes to carry out financial business activities and quasi-financial business activities; they shall not illegally carry out second-hand blind box business activities, induce non-player users to join speculation, deliberately cause violent fluctuations in second-hand market prices, and disrupt normalcy. Transaction order. Blind box operators are not allowed to spread false market information to speculate on sky-high prices; they should not use excessive marketing to encourage consumers to show off and compare; they should not carry out hunger marketing to deliberately lower the probability of picking up specific products.

No “Hunger Marketing”: The guidelines discourage deceptive manipulation of winning probabilities. This practice, also known as “hunger marketing,” involves artificially inflating the rarity of certain rewards to create a sense of urgency and encourage more purchases. Consumers should be able to trust the advertised probabilities and make informed choices without being misled.

3.2.4.3 Harm Minimization

Article 11 Encourages blind box operators to establish a minimum guaranteed mechanism to guide rational consumption and avoid excessive speculation in the secondary market by setting an upper limit on the amount and frequency of withdrawals. Encourage blind box operators to proactively publicize relevant standards and make it clear that when the same consumer draws the same series of blind box products, and the payment reaches a certain amount or the draws reach a certain number of times, reasonable channels are provided so that consumers can obtain the hidden goods or the entire set, or series of products.

“Pity Timers”: Excessive spending fueled by the desire to obtain rare rewards is a potential concern with blind boxes. The guidelines encourage businesses to implement “pity-timer” mechanisms. These mechanisms essentially

⁸⁵ Article 10.

offer a guaranteed way for consumers to acquire the rare rewards or complete the entire collection after reaching a set spending amount or opening a predetermined number of blind boxes in a series. This helps curb impulse buying and sets a limit on potential financial losses. Additionally, the guaranteed availability of rare rewards through “pity-timers” can limit their resale value on the secondary market, preventing excessive inflation driven by scarcity.

3.2.4.4 Age Restrictions and Parental Consent

Article 18 Blind box operators are not allowed to sell blind boxes to minors under the age of 8. When selling blind box products to minors over the age of 8, it is necessary to confirm that the consent of the relevant guardian has been obtained through on-site inquiries or online identification.

Age Restrictions: The guidelines recognize the potential for blind boxes to be exploitative towards children. To protect minors, the sale of blind boxes is strictly prohibited to children under 8 years old. For minors aged between 8 and 18, parental consent is mandatory before making a purchase. This ensures that parents are aware of their children’s spending habits and can make informed decisions on their behalf.

The guidelines tread a careful line regarding the element of chance in blind boxes. While acknowledging that randomness is a key feature, they differentiate blind boxes from financial investments or traditional gambling activities like lotteries. This distinction is crucial in China, where gambling is heavily regulated and often illegal. The focus on informed decisions is another key point. Consumers are expected to understand the random nature of blind boxes before purchase. This means they cannot request refunds or exchanges simply because they dislike the item they received. This protects businesses from frivolous claims but also encourages consumers to be cautious and aware of the potential risks involved in blind box purchases.

However, a grey area remains. The guidelines offer little clarity on where the line between blind boxes and gambling activities like lotteries is drawn. Future enforcement actions might shed light on what practices could be considered illegal “gambling in disguise.”

3.3 Regulatory Agencies

3.3.1 The United Kingdom

3.3.1.1 The U.K. Gambling Commission

The Gambling Act 2005, which came into effect in late 2005, established a comprehensive and wide-ranging system for regulating gambling in the United Kingdom for the first time.

This Act created a national regulatory body, the Gambling Commission, to oversee the commercial gambling industry. Recognizing the importance of, and potential impact on, gambling at the community level as well, the Act also mandated the establishment of local licensing authorities. These local authorities are responsible for regulating gambling and gambling businesses within their jurisdictions, considering the specific circumstances and realities of each locality. There are 368 such local authorities across England, Wales, and Scotland. The Gambling Act also grants local authorities some discretion and responsibility, allowing them a degree of autonomy in carrying out their gambling control functions.

3.3.2 Belgium

3.3.2.1 Belgian Gaming Commission

The Belgian Gaming Commission is responsible for overseeing gambling, games of chance, and various legal betting activities under the Belgian Gambling Act of 1999 (amended 2019). The Commission's legal authorities can be categorized into three main functions:⁸⁶

(1) Advisory Role

The Commission advises the government and parliament on gambling-related matters. This includes providing guidance on draft legislation (including proposed Royal Decrees or amendments to the Act itself), offering recommendations on regulatory control measures, and issuing official

⁸⁶ *ibid.*

pronouncements on gambling issues that fall within the Act's scope. These pronouncements are intended to guide administrative bodies responsible for implementing the Act.

(2) Licensing Authority

The Commission has the authority to grant or deny various types of licenses.

(3) Regulatory Oversight

The Commission supervises and controls licenses to ensure licensees comply fully with all relevant laws and regulations. If a licensee breaches any laws or regulations, the Commission has the power to impose administrative sanctions. These sanctions can range from warnings and temporary suspensions of service to license revocation. The specific penalties applied adhere strictly to the regulations outlined within the Belgian Gambling Act. All decisions made by the Commission must involve a thorough and comprehensive consultation process. Importantly, any licensee facing potential sanctions has the right to challenge the Commission's decision directly. This challenge can be made personally or through a lawyer. If a licensee remains unsatisfied after contesting the Commission's decision, they may ultimately file a lawsuit for judicial review.

In addition to its core functions, the Belgian Gaming Commission collaborates with other government agencies to ensure effective enforcement of gambling laws. These collaborations include:

(4) Federal Public Service "FPS" Finance - Gaming and Betting Department

This department is a central agency of the Belgian federal government, established by Royal Decree in 2002. It has responsibility for government finances and tax collection. Given the importance of tax revenue from gambling and games of chance, the Commission works with FPS Finance to monitor the income reported by gambling operators.

(5) Supreme Court of Cassation, Public Prosecutor's Office, and Federal Police

The Commission works closely with the police to investigate and prosecute illegal gambling activities. To achieve this, the Commission cooperates with the Supreme Court of Cassation and the Public Prosecutor's Office. When violations of the Belgian Gambling Act occur, the Commission relies on information from reports submitted to the Public Prosecutor's Office. The Commission then acts within its legal mandate, while the Public Prosecutor's Office prosecutes criminal offenses, with a particular focus on gambling offenses involving minors and other serious crimes.

(6) Financial Intelligence Processing Unit (CFI)

The CFI is an independent body overseen by the Belgian Ministry of Justice and Finance. It is responsible for examining suspicious financial activities that could be money laundering or financial crimes. The CFI receives reports from institutions and individuals designated by law. Collaboration with the CFI aims to prevent and suppress money laundering and other financial crimes that might use gambling as a means to commit these offenses. The Belgian Gaming Commission has a supervisory role to ensure compliance with the Anti-Money Laundering Act of 1993.

In conclusion, Belgium's approach to gambling regulation differs from many other countries. Here, the Belgian Gaming Commission acts as the central authority for most gambling-related matters. It cooperates with other relevant government agencies as needed to address any gaps that might arise due to the broad scope of the Commission's responsibilities.

3.3.3 Japan

3.3.3.1 The National Consumer Affairs Agency (CAA)

The National Consumer Affairs Agency (CAA) stands as the sole government agency leading the charge in establishing control measures for blind boxes. This central administrative body, overseen by the Prime Minister and acting under the Consumer Protection Act, safeguards consumer rights. Their role involves

crafting protective measures, coordinating with other government entities for a unified approach, and preventing deceptive practices within the industry.

3.3.3.2 Private Sector

The Japanese game industry itself has displayed significant proactiveness. Businesses within the market have implemented self-regulatory measures to govern digital-blind boxes, or the loot boxes in online game. These controls come from both individual companies and industry associations, for example, the Big 6 of the Japan game industry, including, GREE, DeNa, Mixi, CyberAgent, Dwango, and NHM Japan. The Big 6 established the Japan Social Game Association (JASGA), which has later merged with the Computer Entertainment Supplier's Association (CESA) in 2015.⁸⁷

3.3.4 People's Republic of China

3.3.4.1 Shanghai Municipal Administration for Market Regulation (SMAMR)

The “Compliance Guidelines on Blind Box Business Activities in Shanghai” were issued by the Shanghai Municipal Administration for Market Regulation (SMAMR). This initiative reflects collaboration between SMAMR and various city departments responsible for market oversight. These include the Market Supervision Bureaus from all districts, the Market Supervision Bureau of Lingang New Area, relevant departments within the Shanghai Municipal Bureau itself, the Law Enforcement Corps, and the Airport Branch. This collaborative approach ensures comprehensive oversight and enforcement of the blind box business regulations across Shanghai.

The diverse approaches to blind box regulation across different countries, as explored in this chapter, showcase the complex interplay between legal frameworks, cultural perspectives, and enforcement capabilities. However, as emphasized in Chapter 2, the core issue lies in the potential for

⁸⁷ ‘2015 CESA Game White Paper’ (CESA, 2015) <https://www.cesa.or.jp/survey/book/hakusho/detail001_2015.html> accessed 5 April 2024.

exploitation inherent in blind box models. Their deceptive nature, financial risks, and addictive potential raise significant concerns. While the core problem remains similar, the specific context surrounding it varies by country. Differences in legal frameworks, social attitudes toward gambling, and consumer behavior patterns all contribute to distinct challenges. This necessitates customized solutions for each nation. The next chapter dives deeper into Thailand's situation. It will analyze the current state of blind boxes within the country, identify existing legal and regulatory limitations, and explore potential avenues for overcoming these limitations. Building upon the foundation laid in Chapter 4, Chapter 5 will engage in a comparative analysis. It will draw insights from the foreign laws discussed here and the Thai Gambling Laws explored in Chapter 4. This comparison will offer valuable perspectives on potential regulatory approaches for Thailand. Through this analysis, the chapter will aim to provide concrete recommendations for crafting a well-rounded regulatory framework that effectively addresses the challenges posed by blind boxes in Thailand.



CHAPTER 4

THAI GAMBLING LAWS

This analysis will explore the existing provisions within the Thai Gambling Act and analyze their limitations in the face of blind boxes. Later in Chapter 5, we will use the analysis from this Chapter to conduct a comparative analysis with the foreign laws and regulations discussed in previous chapters.

4.1 Legality of Gambling in Thailand

Gambling laws are shaped by the unique social and cultural landscape of each society. Within Thailand, the primary legislation governing this area is the Gambling Act B.E. 2478 (1935). This Act, in alignment with global standards, establishes that the public can only participate in gambling activities or organize them if they have obtained explicit legal permission.

Unlike the gambling laws of other countries discussed in the previous chapter, Thailand's Gambling Act B.E. 2478 (1935) stands out for its distinctive approach to defining "gambling." Rather than providing a formal definition, the Act adopts a method of enumerating specific types of gambling activities, each with its unique characteristics and gameplay. These gambling activities are classified into two categories: List A and List B. Legality under the Act is determined by whether a particular activity falls within either of these lists.

This unique approach to defining gambling has significant implications for the Act's ability to address the issue of blind boxes. In the author's view, the Gambling Act B.E. 2478 is the most pertinent legislation among those examined in this thesis, necessitating a detailed analysis.

4.1.1 The Gambling Act B.E. 2478 (1935)

The primary legislation governing gambling in Thailand is the Gambling Act B.E. 2478 (1935). This Act, along with its ministerial regulations and the

relevant provisions of the Civil and Commercial Code (Articles 853, 854, and 855), forms the legal framework for gambling control in the country.

Defining “Gambling” in Thailand, the Gambling Act B.E. 2478 does not explicitly define “gambling.” However, we can derive its meaning from various sources:

4.1.1.1 The Royal Institute Dictionary (2542)

Defines “gambling” as playing for money or other valuables, relying on intelligence, skill, trickery, wit, and dexterity, as well as luck.

4.1.1.2 Characteristics of Gambling in the Gambling Act B.E. 2478

Certain sections of the Gambling Act B.E. 2478 provide insights into the characteristics of gambling. For instance:

Section 4(2) states that “the word ‘play’ includes betting and predicting.” This indicates that gambling under this law encompasses wagering (which involves betting or predicting).

Section 5 states that “whoever organizes a game in which it is customary to bet money or other property against each other.”

Section 9 defines “any game that risks luck to give money or other benefits to the player.” These sections collectively suggest that gambling involves playing with the potential to gain or lose money or property.

4.1.1.3 Supreme Court’s Interpretation

The Supreme Court has ruled that gambling must involve the risk of both winning and losing for the players.⁸⁸

4.1.1.4 Definition by the Council of State

The Council of State, a legislative drafting body, defined “gambling” in the draft Gambling Act (No. 169/2559) as “playing that involves risking luck, relying on an uncertain outcome or event, as a condition of winning or losing, and aiming to obtain money, property, or other benefits from each other from playing.”

⁸⁸ Comparative Reference to the Supreme Court of Thailand Judgments Nos. 2542/2527, 453-460/2501, and 142/2479.

4.1.1.5 Definitions from Legal Scholars

Chumpon Lohachampa: “Gambling is the act of playing games of chance, which requires wit and skill to bet on property, whether legally or illegally. Examples include playing cards, billiards, snooker, and ghost hunting.”

Rungroj Rianreungwong: “Gambling is a contract that causes the loss of money or property, where the parties to the contract rely on the outcome of an uncertain future event, which is beyond their control, as the deciding factor.”⁸⁹

Supan Poolpatt: “Gambling is the act of playing with the intention of seeking profit, relying on luck, wit, and skill to bet money or property against each other, whether or not it is permitted by law.” “Khanto” is defined as “playing by relying on the risk of an uncertain event that will occur in the future. The parties have different opinions and agree that if the event occurs as agreed, one party will win and the other will lose. The losing party must pay a certain amount of money or property to the winning party.”⁹⁰

Hence, it is evident that the definitions of gambling from legal scholars vary to some extent. However, they all share some key characteristics that are not far from the international legal definition of gambling. Therefore, it can be concluded that the definition of “gambling” in the context of Thai law can be summarized as follows:⁹¹

1. Playing
2. Which relies on luck or skill

⁸⁹ ‘การควบคุมและความหมายของการพนัน’ (ThaiHealth, 28 กุมภาพันธ์ 2554) <<https://www.thaihealth.or.th/?p=232477>> สืบค้นเมื่อ 5 เมษายน 2567 [‘Regulation and Definition of Gambling’ (ThaiHealth, 28 February 2011) <<https://www.thaihealth.or.th/?p=232477>> accessed 5 April 2024].

⁹⁰ สุปัน พูลพัฒน์, คำอธิบายกฎหมายแพ่งและพาณิชย์ว่าด้วย ยืม ฝากทรัพย์ เก็บของในคลังสินค้า ประนีประนอมการพนันชั้นต่อ (พิมพ์ครั้งที่ 4 กรุงเทพฯ: นิติบรรณาการ 2532) 141 [Supan Phunphat, *Explanation of Civil and Commercial Law on Loans, Deposits, Warehousing, Compromise, and Gambling and Betting* (4th ed. Bangkok: Nitibannakan Publisher 1989) 141].

⁹¹ Chonnapat Sudawong (n 10).

3. With the intention of seeking profit, money, or other property⁹²

4. Involve winning or losing

This conclusion is likely to be consistent and closest to the definitions of “games of chance” and “gambling” in foreign law.

4.1.2 Categorizing Gambling Activities in Thailand

The categorization of gambling activities into List A and List B under the Gambling Act B.E. 2478 (1935) can be seen as a way of differentiating between “hard” and “soft” gambling. The criteria for this categorization may include the level of stakes, prizes, and the speed of the game.

4.1.2.1 List A:

Includes gambling activities that involve high stakes, high risk of losing significant amounts of money, or other serious forms of gambling prohibited by ministerial regulations (according to Section 4). These are considered “hard” gambling activities, including, 1. Lottery A., B. (หวย ก. ข.) 2. Po-pan (โปป่น) 3. Po-kam (โปกำ) 4. Tua (ถั่ว) 5. Pad-Kao (แปดเก๋า) 6. Jab yi ki (จับยี่กี) 7. Domino (ต่อแต้ม) 8. Biabok or odd/even or E-Jong (เปี้ยโยก หรือคู่คี่ หรืออีจั่ง) 9. Three-card Monte (ไพ่สามใบ) 10. Mai –Sam-An (ไม้สามอัน) 11. Chang-Nga or Poker (ข้างงา หรือป็อก) 12. Mai-Dam, Mai-Daeng or Pla-Dam Pla-Daeng or E-Dam E-Daeng (ไม้ดำไม้แดง หรืออีดำอีแดง) 13. E-Pong-krob (อีโปงกรอบ) 14. Kam-Tad (กำตัด) 15. Mai-Mun or all roulette-like games (ไม้หมุน หรือล้อหมุนทุก ๆ อย่าง) 16. Hua-Toh or puzzle (หัวโตหรือทายภาพ) 17. Games in which animal torture is practiced, for example, by tying animals with a knife or spines or by poisoning them in a fight, or by setting fire on the back of turtles in a turtle race, or other games in which animals are tortured in similar manners. 18. Billiard roo, Tee-Phee (บิลเลียดรู ดีผี) 19. Yon-jim (โยนจิม) 20. Si-Ngao-lak (สี่เหลาลัก) 21. Kluk-klik (ขลุ่ยคลิก) 22. Nam-tao and its derivatives (น้ำเต้าทุก ๆ อย่าง) 23. High-Low (ไฮโลว์) 24. Spin of coin (อีก้อย) 25. Pan-pae (ปั้นแปะ) 26. E-pong-sad (อีโปงซัด) 27. Baccarat (บาคาร่า) 28. Slot Machine

⁹² ibid.

4.1.2.2 List B:

Mostly includes gambling activities that are relatively “soft” in nature. These are typically games of chance played at festivals or social gatherings, or competitions in the form of sports or games that may be organized without or with low stakes, including, 1. Games in which animals are put to fight or to race such as bullfight, cockfight, fishfight or horse race etc., other than games mentioned in number 17 of List A 2. Bull running (วิ่งวัวคน) 3. Boxing, wrestling 4. Boat racing, rowing 5. Image guessing (ชี้รูป) 6. Quoit (โยนห่วง) 7. Tossing of coins or any object in any kind of container 8. Fishing 9. Drawing lots by any means 10. Target shooting 11. Pitching at face, animals or any object (ปาหน้าคน ปาสัตว์ หรือสิ่งใด ๆ) 12. Tao-Kham-Dan (เต้าข้ามด่าน) 13. Mak-Kaew (หมากแกว) 14. Mak-Hua-Daeng (หมากหัวแดง) 15. Bingo 16. Lottery, raffle or any game of luck promising money or other benefit to any of the players 17. Totalisator of any game 18. Sweepstake of any game 19. Bookmaking of any game 20. Sale of lottery, raffle or sweepstake tickets which are not issued in Siam, but legally held in the issuing country 21. Mah-jong, domino card, card games (ไพ่บนกระจอก ไพ่ต่อแต้ม ไพ่ต่าง ๆ) 22. Backgammon (ดวด) 23. Billiard 24. Khong-Oy (ช่องอ้อย) 25. Sabatoy (สะบ้าทอย) 26. Sabashood (สะบ้าชุด) 27. Table football 28. machine or device that uses mechanical, electrical, optical, or other forms of energy to operate. It is played by touching, sliding, pressing, flicking, pulling, pushing, shooting, throwing, shaking, rotating, or any other method that can result in a win or loss. This can be determined by scoring or by any other means.

The Gambling Act B.E. 2478 (1935) seeks to regulate gambling in Thailand without aiming for complete suppression. This underlying principle reflects the dual nature of gambling - it can lead to negative consequences, such as addiction and crime, but it can also serve as a legitimate form of recreation and relaxation. This approach is in line with gambling legislation in many countries around the world.

While the Gambling Act does not explicitly state this principle, it's evident in the structure and provisions of the legislation. The Act simultaneously prohibits many forms of gambling while allowing certain types under a system of permissions and licensing.

As the Gambling Act B.E. 2478 divides gambling activities into two categories, List A, the gambling activities that are strictly prohibited including games or gambling similar to those listed or other serious gambling activities as specified by ministerial regulations, and List B, gambling activities permitted to be played or organized when legally authorized according to the provisions in List B, these two categories are subject to the following control conditions stipulated in Section 4.

Section 4, paragraph 1:⁹³ Prohibits authorizing the organization of playing, participating in, or gambling in games listed in List A or similar games, or other serious gambling activities prohibited by ministerial regulations. However, even though this is a prohibition, Section 4, paragraph 1 also includes an exception: If the government considers that organizing such games at a specific location and under specific conditions for authorization can be permitted, a royal decree can be issued to authorize such gambling activity under those special conditions.

Section 4, paragraphs 2 and 3:⁹⁴ For games listed in List B or similar games, or other games additionally specified by ministerial regulations, these can be organized for the benefit of the organizer, directly or indirectly, only if the authorized officer who issues permits finds it appropriate and grants a permit, or if

⁹³ Gambling Act B.E. 2478, Section 4 “It is prohibited to permit an organization of, a participation or a gambling in games specified in List A annexed to this Act, or in similar games or any other harmful games which the responsible Minister has additionally prohibited by means of a Ministerial Regulation. However, when the Government considers appropriate to permit any kind of game at a particular place under any conditions, the permission shall be issued by means of a royal decree.

⁹⁴ Gambling Act B.E. 2478, Section 4 paragraphs 2 and 3 “Games specified in List B annexed to this Act, or similar games or any other games which the responsible Minister has additionally prohibited by means of a Ministerial Regulation, shall be permitted for the direct or indirect benefit of the host only upon license when the responsible Minister or the licensing officer considers appropriate, or when a Ministerial Regulation permits the play of such games without license.

In the play of games above-mentioned in the paragraph 2, there shall be gambling only upon license permitting the organization thereof, or when a Ministerial Regulation permits the play of such games without license.”

ministerial regulations allow them to be organized without a permit. This applies regardless of whether the games involve stakes or not.

4.1.3 Penalties for Violating the Gambling Act B.E. 2478 (1935) and Enforcement

The Gambling Act B.E. 2478 (1935) specifies penalties for violating Section 4, paragraph 4 in Section 13. The Act defines games numbered 5 to 15 in List B as games of chance for prizes and does not require these games to have a financial outcome. Therefore, prizes from these games must not be convertible to cash. In addition to prohibiting organizers from giving cash prizes to players, the Act also limits prizes to tangible objects only. If tangible prizes cannot be given, the equivalent monetary value cannot be offered either. Instead, new prizes of the same type must be found for the players. The Act also prohibits all parties from returning, redeeming, or exchanging prizes at the venue of the game or in any surrounding areas during the event.⁹⁵ For example, exchanging bingo doll prizes for cash prizes in the surrounding area is not allowed. These restrictions apply to everyone involved in the game, including organizers, players, and spectators.

Section 10:⁹⁶ Dictates the procedures for officials to follow when handling seized gambling assets.

Section 12:⁹⁷ Addresses the illegal promotion or advertising of gambling activities, outlining potential consequences for those who violate these provisions.

⁹⁵ สมพร พรหมหิตะธร, *คู่มือกฎหมายการพนัน พร้อมด้วยพระราชบัญญัติ การพนัน พ.ศ. 2478 พระราชกฤษฎีกา กฎกระทรวงที่เกี่ยวข้อง* (กรุงเทพฯ: นิติธรรม 2538) 57 [Somporn Phromhitatorn, *A Guide to Gambling Law Including the Gambling Act of 1935, Royal Decrees, and Relevant Ministerial Regulations* (Bangkok: Nitibannakan Publisher 1995) 57].

⁹⁶ Gambling Act B.E. 2478, Section 10 “Stakes seized from the play of games held in violation of the provisions of this Act or the terms of a Ministerial Regulation or the license issued under this Act, shall be entirely confiscated, except possessions which have not been put at stake.”

⁹⁷ Gambling Act B.E. 2478, Section 12. 5 “Whoever organises a game, or deceives people by trickery, or assists in making advertisement or announcement of the game, or invites people

Section 4, paragraph 4:⁹⁸ This section concerns games of chance with prizes. It states that games involving numbers 5 to 15 in List B,⁹⁹ as well as similar games or games specified by ministerial regulations, are considered to be games of chance in festivals or general social gatherings. These games are easily accessible, involve low stakes, and do not lead to serious financial losses. They are commonly referred to as “temple fair games” (e.g., image guessing, quoit, target shooting, bingo, etc.). This section aims to maintain the “soft” nature of these games (i.e., social, accessible, low stakes, etc.) by stipulating that prizes in these games must be non-monetary and cannot be redeemed or exchanged for cash. This applies to both the venue where the game is played and any surrounding areas during the event. This is to prevent anyone from exploiting the relaxed control measures of List B games by using them as a medium for gambling with higher stakes or financial losses.

4.1.4 Unforeseen Gambling Activities

Section 4 bis:¹⁰⁰ This section is a provision to address loopholes in the Gambling Act. It states that “gambling or organizing gambling is allowed only for

directly or indirectly to participate or to gamble in the game which is held without permission of the authority, or with such permission but is played in an unconventional manner. Or whoever participates or gambles in a game held in violation of the provisions of this Act or a Ministerial Regulation or the statements on the license shall be liable as follows ...”

⁹⁸ Gambling Act B.E. 2478, Section 4 paragraph 4 “In games number 5 to 15 in List B, or in similar games or any other games which the responsible Minister has additionally specified by means of a Ministerial Regulation, the prize cannot be awarded in the form of money. And the awarded prize cannot be returned or bought back or exchanged within the premises where the event or the play is taking place, or in any contiguous area.”

⁹⁹ 5. Image guessing (ชี้รูป) 6. Quoit (โยนห่วง) 7. Tossing of coins or any object in any kind of container 8. Fishing 9. Drawing lots by any means 10. Target shooting 11. Pitching at face, animals or any object (ปาหน้าคน ปาสัตว์ หรือสิ่งใด ๆ) 12. Tao-Kham-Dan (เต้าข้ามด่าน) 13. Mak-Kaew (หมากแกว) 14. Mak-Hua-Daeng (หมากหัวแดง) 15. Bingo.

¹⁰⁰ Section 4bis. In any games other than those mentioned in Section 4, there shall be gambling, or the play thereof shall be permitted for gambling, only when such games are named and their conditions for gambling are specified in a Ministerial Regulation.

games with names and conditions specified in ministerial regulations.” This applies to any gambling activity (including guessing and betting) not explicitly mentioned in Section 4 (i.e., games in List A and List B, and other games specified in Section 4). To determine whether a “game” not mentioned in Section 4 falls under Section 4 bis, it must be considered whether the game constitutes “gambling” or “organizing gambling.”

4.1.5 Premium Gifts or Prizes

Section 8:¹⁰¹ Another interesting provision in the Gambling Act B.E. 2478 is Section 8, which states that “any person who offers premiums or prizes by chance in connection with a business or profession must obtain a permit from the licensing officer before doing so.” Additionally, the Gambling Act B.E. 2478 (1935) establishes a framework for licensing gambling operations, outlines enforcement mechanisms and penalties for illegal activities, and defines the taxation of gambling businesses, stipulated in these Section below.

4.1.6 License Management

Section 7:¹⁰² Outlines the essential elements that must be included in a gambling license.

The term “games” in the precedent paragraph shall inclusively means guessing and predicting.

¹⁰¹ Gambling Act B.E. 2478, Section 8. “Arrangements for premium gifts or prizes by means of taking a chance in any manner in the course of a business or an occupation must be permitted in advance by the licensing officer.”

¹⁰² Gambling Act B.E. 2478, Section 7. “All license shall specify:

- (1) Restrictions and conditions of the gambling game in explicit terms.
- (2) Place, date and opening hours during which the game is permitted to be played. In case of license for lottery, raffle or sweepstake, shall also be indicated the number tickets to be sold and the place, date and time of the draw.

Section 11:¹⁰³ Grants the licensing officer the power to revoke a license if there is reasonable cause to believe that the licensee has violated the Act, ministerial regulations, or the terms of the license itself.

4.1.7 Taxation

Sections 16,¹⁰⁴ 16bis,¹⁰⁵ and 17:¹⁰⁶ Specify the tax regulations that must be followed by gambling licensees, detailing how taxes are collected in different circumstances.

4.2 Legality of Blind Box Under Gambling Act B.E. 2478 (1935)

(3) Whether the number of players is fixed, and that it is prohibited for persons under 20 years of age or those who have not come of age to play the game, except the play that comes under List B, number 16.

¹⁰³ Gambling Act B.E. 2478, Section 11 “The licensing officer has the right to recall a license where there is sufficient grounds to believe that the licensee has violated this Act, or a Ministerial Regulation or the license issued under this Act.”

¹⁰⁴ Gambling Act B.E. 2478, Section 16 “The Minister in charge under this Act is empowered to impose on the licensee of the game number 16 of List B a payment of tax not exceeding ten percent of the gross income, the licensee of the game number 19 of List B a payment of tax not exceeding ten percent of the net income, and the licensee of the game number 18 and 20 of List B a payment of tax not exceeding ten percent of the total of the game tickets sold before the deduction of expenses.

By means of a Ministerial Regulation, the Minister in charge under this Act may impose on the licensee of the game number 17, 18 and 19 of List B an additional payment of tax not exceeding two point five percent in order to finance the local municipality where the gambling takes place under the license.”

¹⁰⁵ Gambling Act B.E. 2478, Section 16bis “The tax due under Section 16 and the fees under Section 17 shall be fixed by the Minister in charge under this Act according to local situations.”

¹⁰⁶ Gambling Act B.E. 2478, Section 17 “The Minister of Interior shall be responsible for the implementation of this Act, and is empowered to issue Ministerial Regulations, to appoint responsible officials to proceed under this Act, to fix fees and to set up conditions on gambling and to prescribe regulations for the purpose of implementing this Act.”

Department Of Provincial Administration has published an online article, ‘Blind Boxes and Gambling Laws,’¹⁰⁷ stating that:

“According to information found on social media, some celebrities, actors, and influencers have organized random product boxes (blind boxes). This type of gambling is not authorized by the relevant authorities under the Gambling Act. Therefore, to ensure that the organization of activities complies with the law, we would like to clarify the characteristics of random box activities that may constitute offenses under the Gambling Act B.E. 2478 as follows:

First issue: Does the sale of random boxes constitute gambling? The key characteristic of gambling is that it involves risking luck for gain or loss. Organizing activities by having participants purchase the organizer’s products, such as a random cosmetics box priced at 100,000 baht,¹⁰⁸ which is the minimum normal price of the products on the box, without any additional cost, means the buyer of the random box receives cosmetic products worth no less than 100,000 baht. Therefore, there is no risk of gain or loss for the player, which is an essential characteristic of gambling. Thus, it is not considered organizing gambling under the Gambling Act B.E. 2478. However, if the organizer puts products in the random box with a total value lower than the specified product price, it may constitute gambling with a risk of gain or loss. This is a form of gambling not listed in Section 4, which allows gambling or organizing gambling only for

¹⁰⁷ กรมการปกครอง กระทรวงมหาดไทย; ‘กล่องสุ่มสินค้ากับกฎหมายว่าด้วยการพนัน’ (dopa.go.th) <<https://www.dopa.go.th/assets/modules/news/uploads/e31e9c67d83462e76e417f9f76e489c163242fb309a2686483011939538698.pdf>> สืบค้นเมื่อ 28 มีนาคม 2567 [Department Of Provincial Administration, ‘Blind Boxes and Gambling Laws’ (dopa.go.th) <<https://www.dopa.go.th/assets/modules/news/uploads/e31e9c67d83462e76e417f9f76e489c163242fb309a2686483011939538698.pdf>> accessed 28 March 2024].

¹⁰⁸ Pimrypie’s prize blind box case.

games specified by name and conditions in the Ministerial Regulations under Section 4 Bis of the Gambling Act B.E. 2478. Violation of this provision is an offense under Section 12.

Second issue: Does the sale of such random boxes constitute providing a premium or prize through any means of chance in any manner in the course of a business or an occupation under the Gambling Act B.E. 2478? For an activity to be considered providing a premium or prize through a lottery that requires permission from the relevant authorities under the Gambling Act B.E. 2478, it must meet the following criteria:

- (1) Arrangement for premium gifts or prizes
- (2) By means of taking a chance
- (3) In any manner in the course of a business or an occupation
- (4) Must be permitted by the licensing officer.

Arrangement for premium gifts or prizes by means of taking an in any manner in the course of a business or occupation requires that the goods sold must be at market price. Even if the buyer does not win the lottery, they must always receive goods equivalent to the price paid. In the case of the company organizing the activity, which operates a cosmetics business and a sales representative service, having participants purchase random cosmetic boxes is considered a sale in the course of the company's trade or business. Inside the random box, the buyer will receive various cosmetics with a total value equal to or greater than 100,000 baht. Therefore, the value of the goods exceeding the purchase price can be considered a premium included in the box. This constitutes providing a premium gift or prize through the sale of random product boxes. Even though the buyer or player will receive one box of goods and a premium or prize in every box, the fact that the buyer does not know what type or category of goods or premium they will receive, or whether they will receive goods

with a value equal to or greater than the amount paid, constitutes a mean by chance. Therefore, permission from the issuing authority is required. If it is found that the activity has not been authorized by the relevant authorities, it would be a violation under Section 14 of the same Act. Therefore, the sale of such random boxes may constitute any manner in the course of a business or occupation under Section 8 of the Gambling Act B.E. 2478.

Regarding the provision of premium gifts or prizes by means of taking a chance in any manner in the course of a business or an occupation under the Gambling Act B.E. 2478, the Ministry of Interior has established a policy and guidelines for regulation and control in two phases:

(1) Before granting permission: The issuing officer is instructed to consider granting permission to applicants using only two methods of play: 1) sending product parts, gift vouchers, or other cards for a lottery draw on the date, time, and place specified in the permit, and (2) sending SMS messages or phone calls through various number systems or other similar methods to guess results, answer questions, or express opinions to win prizes by typing the sender's phone number and then drawing a lottery on the date, time, and place specified in the permit. Other methods of play are strictly prohibited..."

To gain a clearer understanding of these legal complexities, the following analysis will dissect the two issues raised in the article: firstly, the gambling issue, and secondly, the premium gifts and prizes issue.

4.2.1 Blind Boxes Under the Definition of Gambling in the Gambling Laws

Considering the characteristics of blind boxes, some of them align with the definition of gambling activities under the Act. Unlike standard promotions, all kinds of blind boxes operate on a completely different principle. These surprise

containers transform buyers into active participants, injecting an element of chance and excitement into the acquisition process. This approach diverges significantly from traditional promotions in several keyways.

Firstly, blind boxes introduce a layer of gambling into the mix. Unlike other promotions, like discounts or giftsets, where the players get a predetermined bonus with their purchase, with blind boxes, to win, the buyers need to spend money on the box itself and then play a game of chance to win the prize they want. This is a similar mechanism to many games, like picture pointing, or fishing. The buyers, as the players, will win some prizes, but that prize might not be what they wish for. This gameplay mechanism will depend on luck. The buyers, as the players, will have the repurchase for many times to get what they wish for. This active involvement adds a layer of risk and excitement that traditional promotions lack. The thrill of the unknown and the potential to win something valuable is a powerful motivator that standard promotions simply cannot offer.

Secondly, the element of uncertainty surrounding the contents of a blind box fuels its appeal. Unlike a promotion where the buyers know exactly what they are getting, blind boxes are a mystery until purchase. This lack of knowledge creates a sense of anticipation and excitement. The thrill of the unknown and the possibility of finding a rare or valuable item adds a layer of intrigue that traditional promotions simply cannot replicate.

Sellers of blind boxes strategically leverage this element of chance and excitement. They craft their products to be widely accessible and incredibly tempting. Tactics like live broadcasts, vending machines, and partnerships with online stores help them reach a large audience. Through these channels, they dangle the allure of winning desirable prizes, enticing potential customers to participate in the gamble.

Blind boxes raise concerns about value disparity between the purchase price and the actual contents. The excitement of the surprise can mask the fact that the cost of individual boxes often outweighs the combined value of the items the buyer receives. This is due to predetermined rarity systems, where a small number of boxes contain coveted high-value items while the majority hold more common,

less valuable ones. This creates a scenario where the buyer could consistently buy boxes without ever receiving the high-value reward, essentially spending more than they get back.

Furthermore, blind boxes often feature limited edition items or tie-ins with popular franchises. This scarcity tactic further increases their desirability and encourages repeat purchases. The hope of acquiring the coveted item fuels the desire to buy multiple boxes, ultimately driving up profits. This emphasis on maximizing customer involvement, coupled with the reliance on blind boxes as a key revenue stream, suggests a profit-driven motive characteristic of gambling enterprises.

Thus, a closer examination of blind boxes reveals characteristics that strongly align with the definition of gambling. To participate, players must pay an entry fee by purchasing a blind box using either traditional currency or, in some cases, digital tokens. This purchase grants the player a chance to win a prize depending on their luck, mirroring the structure of games listed in Items 5 to 15 of Section B. Furthermore, the deliberate focus on accessibility in the design of blind box systems – through various platforms and purchasing methods – strengthens the argument for categorizing them as a form of gambling. With their reliance on chance, the thrill of the unknown, calculated scarcity, and strategic focus on customer involvement, they cleverly blur the lines between traditional promotions and gambling. Their core mechanics, involving elements of plays and chance, strongly resemble games of chance, incentivizing repeated purchases and prioritizing profit generation. This suggests an underlying intention akin to that found in gambling enterprises.

However, not all blind boxes involve the element of loss. If a minimum prize is guaranteed to be the same as the box's value, like in the example of from the Department of Provincial Administration, the buyer will receive the rewards at the price they are paid for. Therefore, there is no risk of gain or loss for the player, which is an essential characteristic of gambling. On the other hand, if the organizer puts products in the blind box with a total value lower than the specified product price, and there is no guaranteed minimum prize, it may constitute gambling under the definition of the Gambling Act with a risk of gain or loss. To ensure compliance with the Gambling Act, blind box organizers should prioritize guaranteed value. This

means ensuring the total value of the contents in each box is at least equivalent to the purchase price. By eliminating the element of “risk of loss” for the customer, they can avoid categorization as gambling under the Act.

Guaranteed value isn’t the sole concern for all blind box organizers. While this approach protects companies that manufacture their own items within the blind boxes (like cosmetics or art toys) or offer in-game loot boxes, it doesn’t address the situation for all organizers. Many online blind box sellers act as resellers, leveraging the blind box mechanism to generate profit. Unlike manufacturers with guaranteed product value, these resellers often operate at a lower price point. This means the potential financial loss for a customer who doesn’t receive a high-value item is relatively small. Their profit strategy revolved around selling a high volume of blind boxes through live streams and online platforms. This bulk purchasing allowed them to secure the products at a lower price point (economies of scale) and maximize their profit margin by placing these lower-cost items within the blind boxes. For these resellers, the profit potential lies either in bulk purchasing or in the chance of selling a low-cost box containing items with a combined value slightly lower than the purchase price, in other words, when the consumers lose the game. Consumers, as mentioned, are often attracted to these boxes not for the guaranteed contents, but for the thrill of potentially acquiring a valuable or rare prize. They bet the money on the chance to receive the prize for entertainment.

This practice resembles the “soft games of chance” listed on List B, such as drawing lots at temple festival. In these games, participants understand the possibility of losing or winning a prize of minimal value, potentially less than the cost of entry. Despite this, players are drawn to the experience itself and the chance of winning a valuable prize. Conversely, the game organizer seeks to profit from the high volume of players who ultimately lose.

Considering these similarities to the games listed on List B, it can be argued that blind boxes should be classified as “soft games of chance” under the Gambling Act Section 4. Specifically, they meet the criteria for games similar to those listed in Items 5 to 15 of Section 4 List B of the Act. These games involve an entry fee, an element of chance, and the potential to win a prize.

Consequently, these blind boxes, that can result in a win or lose, should be added to the provisions governing games of chance under Section 4, Paragraph 2, classified as a type of soft gambling where the prizes cannot be valued in monetary terms, because of their characteristics. This will be explored further in Chapter 6.

4.2.2 Blind Box Under the Premium Gifts or Prizes

Premiums and prizes are a type of sales promotion strategy in which businesses attach premiums to their products or services or offer prizes by chance to attract consumers to buy their products or use their services. It takes the form of a ‘lucky draw’. Premiums come in various forms. They can be physical goods bundled with a purchase, like a free toy in a children’s meal or they might be travel-sized versions of other products or entirely different items altogether. For instance, a cosmetics company might include a free makeup bag with a minimum purchase. Thailand, for example, is known for its creative use of premiums and prizes in sales promotions. One popular tactic involves beverage companies including codes under their bottle caps. Consumers can text these codes to enter a lucky draw for a chance to win prizes ranging from cash and motorbikes to gold or jewelry and even cars. Prizes or premiums are used as a sales promotion strategy to induce consumers to use their products or services. Therefore, Section 8 of the Gambling Act B.E. 2478 (1935) stipulates that the offering of premiums and prizes by chance by businesses is an act that must be licensed by law. The purpose is to control the ‘prizes’ and ‘premium gifts’ that businesses use to attract consumers. The consumers shouldn’t have to pay extra to participate in a chance-based draw for prizes. They buy the product for the chance to receive the premium gifts or prize. If they want to increase the chance to receiving the premium gifts or prize, they can continue buying more, and the company will gain profit from for higher quantity of their product being sold. Promotional strategies that offer premium gifts or prizes tap into the psychology of chance. Consumers are enticed by the potential to win something valuable, motivating them to purchase a product. This creates a cycle where, hoping to increase their odds of winning, they might buy more products, ultimately driving higher sales and profits for

the company. The cost of organizing this “game,” which might involve a lottery system similar to government-controlled lotteries, is entirely borne by the business offering the promotion. The element of delayed gratification further intensifies this effect. Prizes are typically announced after a set period, often chosen through a lucky draw. This waiting period adds to the anticipation and excitement, potentially leading to repeat purchases in the hope of increasing the chance to get the prize. This resembles the behavior of someone buying more and more lottery tickets, driven by the desire to improve their chances of winning a big prize.

Considering the blind box system, from the previous analysis, blind boxes differ from standard promotions because they transform buyers into active participants. To potentially win prizes, customers must spend real money (the box price) and engage in games of chance, just like picture pointing, fishing, or festival games. They play the game by opening the box and know the result of winning and losing immediately. When the result is known, they can repeat purchasing to play the game again. This adds a layer of risk and excitement that fuels the appeal of the blind box model as a kind of play.

While acknowledging the distinct gameplay elements of prize blind boxes compared to traditional gambling, the author aligns with the Department of Provincial Administration’s perspective. This perspective suggests that prize blind boxes with a guaranteed minimum prize value might fall under Section 8 of the Gambling Act. This alignment stems from the presence of key elements outlined in Section 8:

1. Arrangement for premium gifts or prizes: Prize blind boxes inherently offer a chance to win a premium or prize beyond the base product.
2. By means of taking a chance: The contents of the box are unknown, and acquiring a specific prize relies on luck.
3. In any manner in the course of a business or occupation: The sale of blind boxes constitutes a commercial transaction.

This legal framework is not limited to prize blind boxes and also encompass product blind boxes. The scope of Section 8 includes product blind boxes that contain a guaranteed product worth more than the purchase price. In this scenario, the excess value can be considered a “premium gift” under the Act. Even

though buyers receive a single box with a guaranteed premium, the element of chance regarding the specific product or its value within that box aligns with the concept of a random prize awarded through the sale of the blind box.

However, the classification remains unclear for product blind boxes containing a single product with a “secret” element, such as a limited-edition or rare item. For example, collectable art toy blind boxes, featuring limited edition items or popular franchise tie-ins, also warrant examination. These boxes often contain a “secret” product with a lower chance of acquisition, making it rare and valuable on the secondary market. This rarity fuels consumer desire and potentially encourages repeat purchases in the hope of acquiring the secret item. Crucially, these “secret” products function as prizes, similar to traditional prize blind boxes. Obtaining them relies heavily on chance, and the entire system operates as a business strategy to boost sales. This structure seems perfectly aligns with the three key elements outlined in Section 8 of the Gambling Act.

Loot boxes, also, rely on an element of chance for acquiring valuable virtual prizes. The specific contents of the box, be it a coveted in-game weapon or a rare avatar skin, are unknown before purchase. They function as a business strategy, incentivizing players to spend real money to improve their chances of acquiring valuable virtual items. Given these similarities and the presence of all three elements outlined in Section 8 of the Gambling Act (arrangement for prizes, element of chance, and commercial transaction), loot boxes also warrant examination for potential classification under the Act.

The author acknowledges a potential grey area regarding product blind boxes with “secret” elements, like limited edition art toys. While these boxes technically offer a single product, the chance of receiving the coveted item is lower. This scarcity could be interpreted as a “prize” within the box, even though it’s the only content. However, under Section 8, which focuses on “arrangement for premium gifts or prizes,” it’s debatable if this scarcity alone qualifies. The argument hinges on whether the “secret” element is considered a separate prize or simply a variation within the base product offering. Similar to product blind boxes, loot boxes within video games raise questions about the definition of a “prize” under Section 8. While

the most desired items in loot boxes are undeniably rare and valuable within the game's ecosystem, assigning a concrete monetary value can be challenging.

In conclusion, the analysis argues that prize blind boxes with guaranteed minimum prizes fall under Section 8 of the Gambling Act. This section outlines three key elements, all of which are present in prize blind boxes: arrangement for prizes (the chance to win a premium item beyond the base product), element of chance (unknown contents reliant on luck), and commercial transaction (sale of the blind box). Therefore, these prize blind boxes should be subject to licensing and regulation under the Gambling Act.

Furthermore, the analysis suggests that blind boxes that can result in a win or loss, might fall under Section 4 paragraph 2 of the Act. This section outlines the same three key elements.

Because of these factors, these blind boxes should be subject to licensing and regulation under the Gambling Act. However, the issue of licensing for these products presents another challenge that needs to be addressed in the next section of the analysis.

4.3 Control Measures

Based on existing laws, businesses or any blind box providers offering problematic types of blind boxes cannot apply for permission. This is because there are currently no legal provisions specifically addressing any forms of blind boxes.

Section 4, Paragraph 2 of the Gambling Act B.E. 2478, along with Ministerial Regulation No. 17 (B.E. 2503) issued under the Act, authorizes the Minister of Interior to issue gambling licenses only for the types of gambling listed in List B. Since blind boxes are not on List B, they are technically considered illegal.

For businesses offering arrangements with premium gifts or prizes, only the businesses themselves can request a license. However, there are currently only two authorized methods for businesses to conduct lottery-like marketing strategies.

As a result, the government cannot process such applications for approval. Therefore, under current legislation, these types of blind boxes are classified as

gambling and are completely prohibited. However, if the framework of existing gambling laws is considered, the most suitable one is the legal licensing system for gambling under the Gambling Act B.E. 2478 (1935).

4.3.1 Legal Licensing System for Gambling

The current legal measures in Thailand that can be applied to control blind boxes are those under the Gambling Act B.E. 2478 (1935), Section 4, paragraphs 2 to 4, together with the Ministerial Regulation No. 17 (B.E. 2503) issued under the Gambling Act B.E. 2478. By virtue of the powers vested in Sections 4 and 17 of the Gambling Act B.E. 2478, the Minister of Interior is authorized to issue gambling licenses for the types of gambling listed in List B of the Act.

Apart from that, the Ministry of Interior, specifically the Department of Provincial Administration, has enacted numerous regulations and orders to manage the application process and control various forms of gambling. The Minister has the power to issue regulations, appoint officials, establish fees, set gambling conditions, and enforce compliance with the Act. Among these powers is the crucial authority to appoint officials who can issue gambling licenses. These designated officials determine the specific criteria and conditions for gambling activities and are responsible for the overall licensing process.

4.3.1.1 The Procedures and Time Frame for Considering Applications for Gambling Licenses

The Ministry of Interior's regulations on the procedures and time frame for considering applications for gambling licenses under the Gambling Act B.E. 2478 (B.E. 2532), Section 3, stipulate that gambling that requires the approval of the Minister of Interior, which includes gambling under Section 4 (2) (c) above, must be subject to the measures under Section 4 of this regulation, which sets out the licensing procedures, which are:

Step 1: The local licensing officer receives and verifies the accuracy of the application. They record the applicant's statement regarding the type of gambling to be held, the number of rounds for each type of gambling, the scheduled dates for the gambling, and the reasons and necessity for it. If the officer sees fit to

issue a license to the applicant, they will collect evidence along with their opinion and submit it to the province or the Royal Thai Police. The processing time should not exceed forty days from the date the application is received. However, if the officer sees no reason to issue a license to the applicant, they will reject the application by notifying the applicant in writing. The processing time for rejection should not exceed forty days from the date the application is received.

Step 2: The province or the Royal Thai Police consider the application and submit their comments to the Ministry of Interior. The processing time should not exceed twenty days from the date they receive the documents from the local licensing officer.

Step 3 (1): The Office of the Permanent Secretary of the Ministry of Interior considers the application and submits their comments to the Minister of Interior. The processing time should not exceed forty days from the date they receive the documents from the province or the Royal Thai Police.

Step 3 (2): The Ministry of Interior informs the province or the Royal Thai Police of the Minister of Interior's decision. The processing time should not exceed twenty days from the date they receive the documents from the Secretariat of the Minister.

Step 4: The province or the Royal Thai Police inform the local licensing officer of the results. The processing time should not exceed ten days from the date they receive the documents from the Ministry of Interior.

Step 5: The local licensing officer who issued the permit informs the applicant of the results. The processing time shall not exceed ten days from the date the complaint is received from the province or the police department. In case of any doubt regarding the implementation of various procedures, the Permanent Secretary of the Ministry of Interior shall be the arbitrator.

Step 6: The Permanent Secretary of the Ministry of Interior shall be responsible for maintaining this regulation.

While there is a dispersal of authority to local officials to consider some permission requests, the regulations stipulate that local officials can deny a request by issuing a written notification to the applicant if they believe a permit

shouldn't be issued. However, if the local officer examines the application and decides to grant a permit, they must submit it to the provincial or police headquarters. The provincial or police headquarters will then consider the request and forward their recommendation to the Ministry of Interior for another review. The Ministry of Interior's office of the Permanent Secretary will then examine the request and provide a recommendation to the Minister of Interior. After the Minister of Interior considers the request, the Ministry of Interior will then notify the provincial or police headquarters of the decision. The provincial or police headquarters will then inform the local officer who can then proceed accordingly.

4.3.1.2 Control of Days and Times Permitted for Gambling

By the Ministry of Interior, a policy has been established regarding controlling days and times when various types of gambling are permitted.¹⁰⁹ This is done to ensure appropriateness and prevent gambling addiction among citizens. There are several factors considered, especially important days throughout the year when gambling shouldn't be allowed. This policy aims to make sure that permission for gambling is granted appropriately and citizens aren't so engrossed in gambling that they neglect their honest professions. Additionally, it aims to prevent crimes and social issues from arising, particularly problems affecting families. The example is the duration of a gambling license for games listed in Appendix B of the Act is limited. For example, licenses for games such as "picture pointing" and "Quoit" are valid for a maximum of 17 hours per day (7am to 24pm), while licenses for boxing and wrestling are valid for a maximum of 12 hours per day (12pm to 24pm).

(1) Gambling on Animal Fights or Race

1. Permission to hold gambling events can only be granted on official holidays.
2. Permission to hold gambling events is strictly prohibited on important Buddhist holy days.

¹⁰⁹ หนังสือสั่งการกระทรวงมหาดไทยที่ มท. 0307.4/ว 1733 เรื่อง แนวทางการควบคุมวันอนุมัติ อนุญาตจัดให้มีการเล่นการพนัน, 20 เมษายน 2555 [Ministry of Interior Order Letter at MorTor. 0307.4/Wor 1733 Re: Guidelines for Controlling the Approval Date for Permitting Gambling, 20 April 2012].

3. Permission to hold gambling events is prohibited on the following days: Coronation Day of King Phuttha Yodfa Chulaloke (Rama I), Days of remembrance of the Chakri Dynasty, Royal Umbrella Raising Ceremony Day, King Piyamaraj Day

4. Permission to hold gambling events is prohibited between 8 AM and 3 PM on days for electing members of the House of Representatives and the Senate.

(2) Gambling Permitted at Charity Events

1. It is strictly prohibited to grant permission to organize gambling on important Buddhist holidays.

2. It is prohibited to grant permission to organize gambling on the following days: Coronation Day of King Phra Buddha Yodfa Chulaloke (Rama I), Days of remembrance of the Chakri Dynasty, Royal Umbrella Raising Ceremony Day, King Piyamaraj Day.

4.3.1.3 Control by Determining the Age of Players

Section 7(3) of the Gambling Act B.E. 2478 (1935) stipulates that every gambling license must prohibit persons under 20 years of age or persons who have not yet reached the age of majority from playing. This excludes gambling under List B, Number 16, which includes lottery gambling, sweepstakes, or any gambling that involves a risk of chance and provides money or other benefits to any player.

4.3.1.4 Control by Regulating Fee

The Ministry of Interior, through Ministerial Regulation No. 17 (B.E. 2503) and its subsequent amendments, has implemented a system of fees to control gambling activities. This regulation works in conjunction with the primary law, the Gambling Act B.E. 2478 (1935). It establishes different fee structures for each type of gambling. These fees can be applied on a per-event or per-day basis. Additionally, a separate fee system exists for licenses to organize lucky draws or prize promotions as part of commercial activities. These license fees vary based on the duration of the license, ranging from 1 day to a maximum of 1 year.

The Department of Provincial Administration, Ministry of Interior, has provided application forms and licenses, along with specific restrictions and conditions for permission, appropriate for each type of gambling. The application forms and licenses, with the restrictions and conditions for permission from the Ministry of Interior, therefore, have printed forms for all types of gambling listed in the Gambling Act B.E. 2478 (1935) that can be organized when permission is granted according to the law. Each type of gambling has its own application form and license with specific restrictions of time, age of player, and other conditions for permission.

4.3.2 Legal Licensing for Premium Gifts or Prizes

According to Department of Provincial Administration, application for permission to provide premium gifts or prizes by means of taking a chance requires the following documents and evidence:

1) Application Form Phor.Nor.1 Gambling Activities, issued by the Department of Provincial Administration's Public Service Center.

2) Applicant's Statement Form PorKor.14, a record of the applicant's statement regarding the conditions of play, prize distribution, prize items, and advertising, recorded by the official. The Ministry of Interior has a policy to issue permits through only 2 methods:

2.1) Using the method of play by sending product parts, gift vouchers, or other cards for a lottery draw on the date, time, and place specified in the permit, according to the Ministry of Interior's Urgent Letter No. Mor Or Tor 0307.2/W 1651 dated May 31, 2008¹¹⁰. Exception: Specialized television program organizers are allowed to provide premiums or prizes through a lottery in the course of trade or business by using the method of opening a panel. The applicant must be the

¹¹⁰ สำนักงานสอบสวนและนิติการ กรมการปกครอง กระทรวงมหาดไทย, คู่มือการปฏิบัติงานตามกฎหมายว่าด้วยการพนัน 256 <http://ita1.dopa.go.th/ita/ita_files/คู่มือการปฏิบัติงานตามกฎหมายว่าด้วยการพนัน_ch13.pdf> สืบค้นเมื่อ 16 มิถุนายน 2567 [Investigation and Legal Affairs Bureau, Department of Provincial Administration, Ministry of Interior, Manual for Legal Practices Concerning Gambling 256 <http://ita1.dopa.go.th/ita/ita_files/คู่มือการปฏิบัติงานตามกฎหมายว่าด้วยการพนัน_ch13.pdf> accessed 16 June 2024].

manufacturer of the product themselves or the sole distributor in Thailand, except for businesses that are shopping centers, department stores, banks, or legal entities engaged in service businesses.

2.2) Using the method of sending SMS messages or phone calls through various number systems to guess results, answer questions, or express opinions to win prizes, by typing the sender's number and then drawing a lottery on the date, time, and place specified in the permit, according to the Ministry of Interior's Urgent Letter No. Mor Tor 0307.2/W 2384 dated July 28, 2008.¹¹¹ In this case, the applicant does not need to be the manufacturer of the product themselves or the sole distributor in Thailand.

3) Company's Letter of Intent to Apply for Permission. This letter is from the company to the official, requesting permission to provide premiums or prizes. The letter must cover the conditions of play, prize redemption, duration of play, prize items, prize drawing location, and advertising.

4) Power of Attorney, specifically for the matter, with a 10 baht stamp duty, or a general power of attorney with a 30 baht stamp duty, signed by the authorized person and stamped with the company seal if required by the company registration certificate.

5) Copy of the ID card of the person granting the power of attorney.

6) Copy of the ID card and house registration of the person receiving the power of attorney.

7) Copy of the company registration certificate, registered with the Department of Business Development, Ministry of Commerce, along with the objectives.

8) Purchase order, reservation form, or sponsorship letter for the prize items. If not available, the applicant company must provide a letter certifying the preparation of prizes. In the case of gold, cars, or real estate prizes, a purchase order must be used.

¹¹¹ *ibid.*

9) Certificate of trademark registration from the Department of Intellectual Property or a sole distributorship agreement in Thailand, or a sales license, patent, or distributorship agreement from a foreign company that has not registered a trademark in Thailand. A construction permit for the project in the case of housing estates or condominiums, or any other document showing the right to sell or distribute the product, or the right of ownership of any goods or services.

10) Sample of printed advertisements or sample coupons for the lottery.

11) Letter of consent to use the premises if the prize drawing is held outside the company's premises.

Obtaining permission to offer premium gifts and prizes by means of taking a chance in Thailand requires a comprehensive application process, ensuring legitimacy and responsible practices. Notably, the government only allows two methods for distributing parts related to the premium gifts and prizes: sending physical parts/coupons or utilizing SMS by the businesses, who might or might not own the products depends on the context. This regulation aims to maintain transparency and prevent potential fraud in these chance-based promotions.

Prize documentation plays a crucial role in this process. Applicants must provide purchase orders, reservation forms, or sponsorship letters for the premium gifts and prizes. This requirement demonstrates the government's commitment to ensuring the prizes actually exist and are readily available to winners. This approach fosters trust and protects participants from fraudulent schemes involving premium gifts and prizes awarded by chance.

However, a key challenge arises despite the Department of Provincial Administration's guidelines. Currently, the Ministry of Interior only permits two methods for distributing premium gifts and prizes awarded by chance: sending physical parts/coupons or utilizing SMS. This limitation creates a grey area for blind boxes, as their application for licensing falls outside these authorized methods. Consequently, under current regulations, blind boxes might be considered illegal.

4.3.3 Other Related Measures

In addition, there are currently legal measures that Thailand has implemented to suppress online gambling websites. Based on Section 4 bis of the Gambling Act B.E. 2478 (1935), online gambling is considered illegal gambling. Section 20 of the Computer Crime Act B.E. 2551 (2008) is also applied to block access to websites that organize online gambling.

At the same time, the Technology Crime Suppression Division, in collaboration with the Ministry of Digital Economy and Society, can retrieve computer traffic data to track down offenders for punishment. During the year, there have been significant movements by DES - PCT in suppressing and arresting illegal online gambling website providers in large numbers.

Efforts to regulate blind boxes are gaining traction, particularly in response to their recent surge in popularity among online merchants. However, there's currently a lack of clear and enforced regulations specifically targeting blind boxes.

4.4 Regulatory Agencies

4.4.1 Department of Provincial Administration, Ministry of Interior (Licensing Authority)

According to Section 17 of the Gambling Act B.E. 2478 (1935), the provincial administrative officials of the Ministry of Interior in each area where gambling is organized are designated as the officials authorized to issue gambling licenses for the types of gambling listed in Appendix B of the Act. They also have the authority to issue licenses for the organization of lucky draws or prizes by chance in connection with commercial or professional activities under Section 8. The Act also prescribes the rules and regulations for granting licenses by the provincial administrative officials at each level.

The Gambling Act B.E. 2478 (1935) assigns the authority to issue gambling licenses to the Department of Provincial Administration, Ministry of Interior in each local area. This is because traditional gambling activities are typically organized as events that are tied to a specific time and place. Therefore, it makes sense for the

law to grant authority to the local administrative officials who are responsible for overseeing activities in their respective jurisdictions.

However, when it comes to the problems of blind boxes with the widespread availability of them across various platforms, including live streams on social media and e-commerce platforms, it challenges the effectiveness of geographically based licensing for regulating them. Unlike traditional gambling activities tied to a specific location, blind boxes can be purchased and opened anywhere, regardless of local regulations. Therefore, this disconnect between the physical location of purchase and the inherent randomness of the product might raise concerns about the limitations of geographical licensing in effectively regulating the blind box market if they have to be the regulatory agency.



CHAPTER 5

COMPARATIVE ANALYSIS

The previous chapters explored the complexities surrounding blind boxes. Chapter 2 delved into the core issues, highlighting the potential for exploitation and consumer harm. Chapter 3 served as a case study, examining the blind box regulations of various foreign countries. Chapter 4 analyzed the existing legal and regulatory limitations in Thailand.

Now, Chapter 5 builds upon this foundation by engaging in a comparative analysis. We will revisit the foreign blind box regulations discussed in Chapter 3 and compare them to Thailand's Gambling Laws explored in Chapter 4. This comparative approach allows us to identify best practices, potential pitfalls, and opportunities for tailoring a well-rounded regulatory framework specifically for Thailand.

5.1 The Comparative Analysis of Gambling Laws

The UK leans towards a permissive approach. Most forms of gambling are legal for adults, with regulations in place to manage risks like addiction and money laundering.¹¹² Belgium, on the other hand, prioritizes stricter controls. This is evident in their classification of loot boxes as gambling, making them illegal without a license.¹¹³ Japan and China, though geographically neighbors, exhibit starkly contrasting approaches to gambling regulation. Japan leans towards strict control. Legal gambling is limited to government-run activities like lotteries and specific sports betting. The focus lies on preventing commercialized gambling and protecting citizens from financial hardship. China, on the other hand, enforces a near-blanket ban on most forms of gambling. Their primary concern is safeguarding vulnerable populations, particularly children. Due to the lack of a clear legal definition, authorities rely on discretion and evolving policies to determine what constitutes gambling.

¹¹² House of Common, Culture, Media and Sport Committee (n 41).

¹¹³ See Section 3.1.1.2.

The definitions of gambling also differ. The UK has a broad definition encompassing activity with potential gain or loss determined by risk.¹¹⁴ Belgium's definition, based on their 1999 Gambling Act, is stricter. An activity must meet four criteria to be considered gambling: it must be a game with rules and a win condition, involve a wager (money, in-game currency, or virtual items with real-world value), have a win/loss outcome, and crucially, involve an element of chance where the outcome is not solely determined by skill.¹¹⁵ Japan defines it as an activity with an element of chance and a prize, even if some skill is involved. The emphasis is on "luck" as a factor, not necessarily the dominant one.¹¹⁶ China lacks a clear legal definition, but authorities generally consider gambling as paying to participate in an activity with an uncertain outcome, with the goal of winning money or something valuable.¹¹⁷ Three key elements are often scrutinized: payment, chance, and prize. Japan employs a rigid system with specific regulations for authorized gambling activities. Strict controls are in place to prevent unauthorized operations. China's approach is more enforcement-focused. Authorities are actively cracking down on all forms of gambling, both traditional and new forms like loot boxes. Their strategy hinges on identifying and shutting down illegal activities.

The UK, Belgium, Japan, and China aim to protect vulnerable populations from gambling harm. However, they differ in their tolerance for risk. The UK prioritizes a balanced approach, while Belgium prioritizes stricter controls. Japan allows some forms of gambling under strict government control, while China prioritizes a complete ban. As technology and gambling practices evolve, all countries are likely to continue adapting their regulations to address these new challenges.

Comparing these countries, there's a spectrum of approaches to gambling regulation. The UK and Japan allow some forms of gambling with varying degrees of control. Belgium and China prioritize stricter control or outright bans to minimize

¹¹⁴ Gambling Act 2005, Sections 6, 9 and 14.

¹¹⁵ Peter Naessens (n 34) 8-12.

¹¹⁶ Hitoshi Ishihara (n 61) 255.

¹¹⁷ Charles Li, Vivian He and Kaiying Wu (n 67).

potential harm. The legal definitions of gambling differ across countries. Some, like the UK, have broad definitions focusing on risk and potential harm. Others, like Belgium, have stricter definitions with specific criteria. This can lead to varying interpretations and regulations for new forms of gambling. Countries also differ in how they regulate gambling. The UK and Japan have established systems with specific rules for different gambling activities. Belgium and China are more reactive, adapting regulations and enforcing them based on emerging trends. Despite their differences, all the countries analyzed prioritize protecting vulnerable populations from gambling harms.

Regarding the Thai Gambling Act of 1935, the basic principle is the same as that of the United Kingdom and the Kingdom of Belgium, which is to prohibit commercial gambling operations unless a license is obtained. However, a key difference between the Gambling Act of 1935 and the gambling laws of all previous countries is that the Gambling Act of 1935 does not define “gambling” but instead chooses to list various types of gambling in the law. It divides each type of gambling into two categories: the first category is gambling that must be absolutely prohibited, listed in List A, and the second category is gambling that is considered a soft gambling allowed to be played or organized when permitted by law, listed in List B. It is also considered that games with similar characteristics fall under the same provisions. This soft gambling in List B is similar to the “momentary amusement” in Japanese gambling law. However, unlike the exemption in Japan, they are limited by licensing in Thailand. Additionally, Thai Gambling law also controls the arrangement for premium gifts or prizes by taking a chance in business by licensing measures in Section 8 to prevent consumer deception, which is similar to The UK’s control of lotteries run for commercial purposes.

5.2 The Comparative Analysis of the Legality of Blind Box

In the UK, the legality of blind boxes currently resides in a grey area. Loot boxes are not considered gambling under the Gambling Act 2005. This hinges on the

idea that virtual items within games lack real-world economic value.¹¹⁸ However, the ability to trade loot box prize on a secondary market complicates the issue. If the prize gains monetary value by being resold, they could be classified as prizes, potentially transforming the loot box into a regulated “game of chance.”¹¹⁹ Similarly, physical blind boxes could also fall under gambling regulations if their contents hold real-world value due to a secondary market, yet there is currently no official interpretation of the case. Additionally, under UK lottery law, prize blind boxes could potentially be classified as lottery-like schemes under the UK gambling law because they involve prizes that are distributed based on chance. However, lottery-like schemes without a payment, particularly the consumers just purchase goods at normal prices to enter a prize draw, don’t count as payment for lottery purposes and are not regulated gambling in UK law.¹²⁰ These fall into ‘free prize draws’. For the prize blind box to fall under the definition of the normal prize, the reward in the box must have a value at a minimum of the selling price of the box. If the reward in the blind box has a monetary value lower than the selling price, then it will not be considered the normal prize and is not a free prize draw, which makes it an illegal lottery-like scheme with the elements of prize, chance, and payment. Hence, for the prize blind boxes to be considered a form of lottery-like scheme, the minimum price of the reward must be guaranteed to be the same as the selling price, making them fall into the exception of free draw and are not regulated under the Gambling Act 2005.

In sum, analyzing the legality of each type of blind box under the UK Gambling Act, loot boxes are not considered gambling, product blind boxes might be considered gambling because of the monetary value interpretation, and prize blind boxes could be classified as lottery-like schemes because they involve prize, chance, and payment. Still, if the minimum prize is guaranteed to meet the selling price, they will fall into the exception of the free draw.

¹¹⁸ ‘Loot Boxes Within Video Games’ (n 70).

¹¹⁹ ‘Virtual Currencies, eSports and Social Gaming – Discussion Paper’ (n 68).

¹²⁰ UK Gambling Act 2005, Section 14(2).

Belgium, on the other hand, takes a much stricter stance. Here, loot boxes, or any blind boxes, are classified as gambling due to four key elements. Firstly, they are considered games due to player interaction and the existence of distinct outcomes. Secondly, the virtual currency used for purchasing loot boxes can be considered a wager if it holds value within the game, same for the real-world money and the physical blind box. Thirdly, the element of chance in obtaining a prize creates a win/loss scenario. Finally, luck, even if not the dominant factor, plays a role in determining the outcome. Under this framework, any blind boxes are likely viewed as gambling. The fixed price for a random item with varying potential values creates a chance-based win/loss situation, regardless of whether the prize is physical or monetary.¹²¹

Japan's approach to blind boxes differs significantly from both the UK and Belgium. The Consumer Protection Law takes center stage. The interpretation of chance in Japan also diverges from the UK. While both countries recognize chance as a key element, Japan introduces the concept of "momentary amusement" as a potential exemption. If the prizes hold minimal value, similar to the non-cash prizes offered by pachinko parlors (exchangeable for small gifts), they might fall under this exemption. Additionally, regarding the prize and premium, Japan's Act against Unjustifiable Premiums and Misleading Representations (APM Law) prioritizes consumer protection and fair value. Specifically, it targets the value of the prize itself. It prohibits businesses from offering "unjustifiably large" prizes relative to the base product's value, e.g. the case of the card game that has the limit set to 10 times the value of the main product or service. This provision aims to prevent companies from manipulating purchasing decisions by using prizes to incentivize buying something a consumer wouldn't otherwise purchase. Furthermore, the APM Law prohibits false or misleading claims about the contents of the blind box. This ensures that consumers have accurate information about what they buy and the potential prizes they might receive.¹²²

¹²¹ See Section 3.1.2.2.

¹²² Sebastian Schwiddessen (n 76).

China's approach to blind boxes is shaped by its strict stance on gambling, contrasting with the more permissive approach of the UK. However, unlike Belgium, which classifies digital blind boxes as gambling, China's legal landscape surrounding blind boxes remains somewhat unclear. Similar to Japan, China focuses on the potential monetary value of blind box contents. However, China enforces anti-gambling laws more strictly. While chance plays a role in blind boxes, the predetermined sets and emphasis on surprise differentiate them from illegal gambling activities in China's eyes. The key difference lies in monetary loss. Unlike traditional gambling, where losing a bet directly translates to losing money, blind boxes lack a direct way to convert them back to cash. However, the presence of a secondary market where rare items can be resold for profit introduces a similarity to gambling. The limited scale of these secondary market transactions, compared to traditional gambling, is another factor that keeps blind boxes out of the clear-cut gambling category in China. However, considering the potential for monetary loss within the blind box itself, if the average value of the items inside a prize blind box is consistently lower than the retail price, it could be argued that the consumer is essentially gambling on the chance of receiving a valuable item to offset the initial loss.

Comparing these countries, the UK navigates a grey area, with loot boxes exempt due to virtual items' lack of real-world value, but the presence of a secondary market complicates the issue. Physical blind boxes might also face regulation if their contents hold value due to resale. Also, under UK lottery law, prize blind boxes could potentially be classified as illegal lotteries if they involve a prize, chance, and payment. Belgium takes a stricter stance, classifying all blind boxes as gambling due to chance, wagers, and win/loss scenarios. Unlike Belgium, Japan prioritizes consumer protection and introduces the concept of "momentary amusement" as a potential exemption for blind boxes with contents that hold minimal value, similar to non-monetary prizes offered by pachinko parlors (exchangeable for small gifts). China, similar to Japan, considers potential monetary value but enforces stricter anti-gambling laws. China views blind boxes differently from traditional gambling due to their predetermined sets and emphasis on surprise, despite the element of chance. Unlike gambling, where the outcome directly depends on a wager, the contents of a blind box are predetermined,

and the surprise element takes center stage. The key difference lies in the lack of direct conversion to cash, unlike traditional gambling. However, the presence of a secondary market and the potential for the average value of blind box contents to fall below retail price raise concerns about gambling aspects.¹²³

In Thailand, the Gambling Act of 1935 plays a crucial role in determining the legality of blind boxes. Products like prize blind boxes, where the reward value is not guaranteed, or any blind box offering the chance of winning or losing, share similarities with games listed from number 5 to 15 in List B of the Act. These games offer non-monetary rewards and prohibit purchasing or exchanging them within the play area or surrounding vicinity. However, such games can only be organized when the competent minister or licensing officer deems it appropriate and issues a license, or when a ministerial regulation allows for license-free operation. Additionally, prize blind boxes offering a high-value prize through chance resemble “premium gifts and prizes by business” which require prior permission from the licensing officer. Similar to the case of UK, the minimum prizes from the box must be at least at the value of the purchasing prize for the blind box. However, the current situation creates a legal grey area. Since blind boxes are neither included on the list of allowed games of chance under Section 4 nor the permitted methods for business prize arrangements under Section 8, they could be considered technically illegal in Thailand. This is similar to the case of Belgium that loot boxes are considered a form of gambling that require licensing, yet there is no current method to request for the license.

5.3 The Comparative Analysis of the Control Measure

Each country takes a distinct approach to regulating blind boxes. Belgium focuses on licensing and controlling all types of blind boxes, including those in online games. Japan prioritizes consumer protection, outlawing multi-level blind boxes. The UK currently lacks any legal measures for blind box control despite their interpretation of the real-world value. China’s approach centers on product restrictions, value for

¹²³ See Section 3.1.2.4.

money, and preventing financial speculation. They strictly prohibit live animals, hazardous materials, and certain food items from being sold in blind boxes. Additionally, they encourage pricing based on actual content value and limit single blind box prices to ¥200 Renminbi (around \$31.50 USD). To curb excessive spending and limit the resale value of rare rewards, China discourages practices like “hunger marketing” and encourages “pity timer” mechanisms that guarantee rare rewards after a certain spending threshold¹²⁴.

On transparency and fairness, Belgium requires clear information on win rates, and their licensing system ensures adherence. While Japan’s industry self-regulation measures might include disclosing win rates. China mandates clear disclosure of key information like product types, box drawing rules, and the probability of winning different rewards. They also require maintaining records of opening results for verification.

For harm minimization, Belgium, Japan, and China aim to protect consumers through age restrictions and licensing or industry self-regulation. China enforces age restrictions, prohibiting sales to children under 8 and requiring parental consent for those aged 8-18. Additionally, they promote “pity timer” mechanisms to limit spending and guarantee the acquisition of rare rewards.

For Thailand at present, although no measures have been enforced before, if considering the existing legal measures, Thailand has licensing application forms for all types of gambling stipulated in the Gambling Act of 1935, which can only be organized when permitted by the licensing officer. Each type of gambling has its own application form and license, along with specific conditions and limitations for that type of gambling. Therefore, if considering the current written legal provisions, blind box providers who offer problematic types of blind boxes with a chance to lose without permission may be blocked and suppressed by authorities because they are games of chance that are not legally permitted. This is due to it being a game under Section 4. However, at the same time, due to the nature of specific conditions for each

¹²⁴ Notice of the Shanghai Municipal Administration for Market Regulation on the Issuance of the “Compliance Guidelines on Blind Box Business Activities in Shanghai” (n 77).

type of gambling, which is the most appropriate measure for controlling each type of gambling as mentioned earlier, but because of these specific conditions, when there are no specific conditions for blind boxes, the state cannot proceed with the legal licensing process. As a result, blind boxes, under current Thai law and legal measures, are completely prohibited games, contradicting to the original intent of the law, which intended this type of game to be allowed if legally permitted.

Thailand's Gambling Act shares some similarities with UK regulations concerning lottery-like schemes, but with a key difference. Section 8 of the Act requires businesses offering premium gifts or prizes to obtain a license. This licensing requirement mirrors the UK's approach to regulating "lottery-like schemes" that involve prizes distributed based on chance, but without a direct payment for entry. However, unlike the UK, Thailand's law doesn't offer an exemption for "free prize draws." This means that in Thailand, even if customers purchase a product at its normal price and are entered into a prize draw as a bonus, it might still be considered a regulated activity under the Gambling Act.

By adopting a more comprehensive approach inspired by Japan, and China, Thailand could establish regulations that address key concerns like price caps, win rates, transparency, and age restrictions. These measures could be implemented through Ministerial Regulations and Ministry of Interior orders, leveraging the existing licensing system to ensure compliance. This adaptation would provide consumer protection and prevent potential gambling harm associated with problematic blind box practices.

5.4 The Comparative Analysis of the Regulatory Agencies

Belgium offers a case study in a centralized system. Both the Ministry of Interior and the Belgian Gaming Commission play a role. While the Ministry handles broader internal security matters, the Gaming Commission focuses specifically on gambling regulations. This specialization of the Gaming Commission allows for a more flexible and efficient approach compared to a single, centralized ministry. This highlights the potential benefits of a specialized agency for streamlined and efficient

regulation. The United Kingdom, on the other hand, provides an example of a decentralized structure. Local licensing authorities, with their specialized knowledge of their areas, handle the process. This approach fosters efficiency and adaptability, in contrast to Thailand's current system where repeated considerations happen through a single Ministry.

Japan stands out for its unique approach. Here, the private sector plays a prominent role in establishing control measures for blind boxes. This approach stems from the specific dynamics of the Japanese game industry. However, directly adapting this model to Thailand might not be suitable due to potential differences in the industry landscape.

China's approach to regulating blind boxes differs significantly from the others. Unlike the national-level agencies seen in other countries, China utilizes the Shanghai Municipal Administration for Market Regulation (SMAMR) as a local agency. SMAMR focuses on regulating blind box activities within Shanghai and collaborates with various city departments for comprehensive oversight. This localized approach highlights the potential need for Thailand to consider regional variations when crafting regulations.

For Thailand, the Gambling Act assigns licensing authority for traditional, location-based gambling to the Department of Provincial Administration within the Ministry of Interior.¹²⁵ This local focus makes sense for overseeing physical events. However, blind boxes can be purchased and opened anywhere, making geographically-based licensing potentially ineffective in regulating their widespread availability across online platforms and social media. This disconnect between purchase location and the product's inherent randomness highlights a potential limitation of the current licensing structure for regulating blind boxes.

Hence, Thailand's current system for regulating gambling activities, which relies on the Ministry of Interior for geographically-based licensing, stands in contrast

¹²⁵ กฎกระทรวง ออกตามความในพระราชบัญญัติการพนัน พุทธศักราช 2478 ฉบับที่ 17 พ.ศ. 2503 [Ministerial Regulation issued under the Gambling Act, B.E. 2478 No. 17 B.E. 2503]. Ministerial Regulation No. 17 (B.E. 2503).

to the approaches of other countries. While Belgium offers a centralized model with a specialized Gaming Commission, the UK utilizes a decentralized system with local authorities. Japan involves the private sector for control measures, and China utilizes a localized approach with the Shanghai Municipal Administration for Market Regulation. This comparison highlights the limitations of Thailand's current structure for effectively regulating the online nature and widespread availability of blind boxes.



CHAPTER 6

CONCLUSION AND RECOMMENDATION

6.1 Conclusion

6.1.1 Conclusion on the Gambling Act of Thailand as a Solution of Blind Box Issue

After examining all chapters of this thesis, it was determined that the Gambling Act B.E. 2478 (1935). of Thailand already covers games similar in nature to blind boxes. Section 4 addresses blind boxes with win/loss elements, while Section 8 addresses blind boxes used as marketing tools. This means that blind boxes can be legally operated if permitted under the law through specification in ministerial regulations for gameplay and issuance of Ministry of Interior orders for premium gift and prize distribution arrangements. Therefore, the legal principles in this section can be directly applied to such cases without analyzing the nature of the game itself, whether it constitutes gambling, or its monetary value and exchangeability, unlike the approach taken by laws in other countries that define gambling within their legislation.

Furthermore, applying the Gambling Act B.E. 2478 (1935). offers legal certainty and enables the utilization of other relevant provisions. For instance, Section 4, paragraph 4, prohibits the exchange of in-game items for money or prizes, addressing the issue of third-party markets and the trade of blind box rewards. Additionally, Section 7 (3) prohibits individuals under 20 or those not of legal age from participating in all forms of gambling (except those listed in Schedule B, Item 16) under a government licensing system, thereby protecting children and youth. The process for obtaining permission to offer premiums or prizes under Section 8 also incorporates consumer protection measures, requiring the purchase of prize items before playing and allowing only the sole manufacturer to organize the game.

Therefore, the author concludes that applying the Gambling Act B.E. 2478 (1935) to this matter is the most appropriate course of action.

6.1.2 Conclusion on Legality of Each Type of Blind Box Under the Gambling Act B.E. 2478 (1935)

The legal status of blind boxes in Thailand hinges on the specific type of box. Two main categories exist: prize blind boxes and product blind boxes.

Prize blind boxes offer a chance to win a premium item exceeding the base product's value. If such a box guarantees a minimum prize worth at least the purchase price, it might fall under Section 8 of the Gambling Act B.E. 2478 (1935). This section regulates situations where businesses offer "arrangements for premium gifts or prizes" obtained by chance during a commercial transaction. However, the situation becomes less clear-cut when the total value of the box's contents falls below the purchase price and there's no guaranteed minimum prize. In this scenario, the element of risk and potential loss strengthens the argument for classifying it as a game of chance under Section 4 of the Act. This section is concerned with regulating games similar to those listed in Items 5 to 15 of Section B. These games typically involve an entry fee (the purchase price of the blind box), an element of chance, and the potential to win a non-monetary prize.

Section 8 could potentially apply to product blind boxes where the guaranteed product value exceeds the purchase price. In this situation, the additional value could be considered a "premium gift" as defined by the Act. Although buyers receive a single box with a guaranteed bonus, the element of chance remains. They don't know the specific product they'll receive or its exact value within the box. This element of chance aligns with the concept of a random prize awarded through the sale of a blind box.

However, the classification remains unclear for product blind boxes containing a single product with a "secret" element, such as a limited-edition item. While the Act focuses on situations with designated "premium gifts or prizes," the question arises whether this limited-edition element constitutes a separate prize or simply a variation of the base product itself. The author ultimately concludes that the limited edition and scarcity elements, used as marketing tactics to create collectability, don't qualify as prizes under Section 8. This is because they differ from the element of chance inherent in games of chance. In essence, the limited edition and scarcity

aspect serves a marketing purpose rather than introducing a random prize element. Similar to product blind boxes, video game loot boxes raise questions about “prizes” under the Act. Top loot box items are valuable in-game, but lack a clear real-world worth, making it hard to classify them under gambling laws.

In sum, the product blind box that can result in a win or loss is considered a form of gambling, the author argue that it is similar to the soft game of chance under Section 4 Paragraph 2 of the Gambling Act B.E. 2478 (1935). The product blind box offer a chance to win a premium item exceeding the base product’s value and the prize blind box are arrangements for premium gifts or prizes by means of taking a chance under Section 8 in any manner in the course of a business or an occupation of the Gambling Act B.E. 2478 (1935). All of them must be permitted by the licensing officer.

6.1.3 Conclusion of Control Measure

The Gambling Act B.E. 2478 (1935) establishes a framework for licensing gambling activities in Thailand. Sections 4 and 17, along with Ministerial Regulation No. 17 (B.E. 2503), empower the Minister of Interior to issue licenses for specific types of gambling listed in Appendix B of the Act. These licenses also govern aspects like operating days and times, player age restrictions, and licensing fees.

For businesses offering “arrangements for premium gifts or prizes” obtained by chance, Section 8 of the Act outlines the application process for obtaining permission. This process aims to ensure responsible practices and transparency. Notably, the government only allows two methods for distributing prize components: physical parts/coupons or SMS sent by the businesses. This regulation strives to prevent potential fraud in these chance-based promotions. The requirement for prize documentation, such as purchase orders or sponsorship letters. This approach protects participants from fraudulent schemes involving these chance-based awards.

The author acknowledges that Thailand’s current licensing system under the Gambling Act offers a foundation for regulating blind boxes. However, it’s recognized as having limitations in effectively addressing the full scope of the issue.

A more comprehensive approach, inspired by regulations in Japan and China, is recommended. This approach could leverage Thailand's existing licensing system, but with some key adaptations:

1) Price Caps: Similar to Japan's limit on prize values within blind boxes and China's emphasis on "small-value" and "non-cash" contents, Thailand could establish price caps through Ministerial Regulations. This would help curb excessive spending fueled by the potential for high-value prizes.

2) Transparency Measures: Regulations could mandate greater transparency in several areas:

a. Product Distribution: Disclosing the odds of obtaining specific items within a blind box series.

b. Product Value Range: Providing a range for the value of items within a series.

c. Number of Draws per Series: Limiting the number of times a specific series can be produced and sold.

By mandating these details through Ministerial Regulations, consumers would be empowered to make informed decisions before purchasing blind boxes.

Thailand's existing licensing system under the Ministry of Interior could be a valuable tool for enforcing these new regulations. Integrating these requirements of consumer protection into the licensing process would ensure compliance from businesses seeking to offer blind boxes legally. This approach would combine Thailand's established legal framework for gambling with best practices observed in other countries. The details on the suggested measure will be discussed in the next section, Recommendation.

6.1.4 Conclusion of Regulatory Agency

Thailand's Gambling Act assigns the Department of Provincial Administration within the Ministry of Interior the authority to issue gambling licenses. This system works well for traditional gambling activities that are location-based events. However, it's not very effective for regulating blind boxes because they can be

purchased and opened anywhere due to their online availability. This disconnect between the physical purchase location and the inherent randomness of the product creates limitations for geographically-based licensing as a regulatory tool for the blind box market.

The author recommends adapting the existing framework of the Ministry of Interior and the Department of Provincial Administration, drawing inspiration from the United Kingdom's model, while decentralizing the current system. Unlike the centralized approach in Thailand, the UK distributes authority based on expertise and understanding of local contexts. To regulate blind boxes in online platforms effectively, a specialized licensing authority with a similar structure to the UK's local licensing authorities is proposed. This new department-level unit would possess the knowledge and expertise to oversee digital media activities, potentially operating under the Ministry of Digital Economy and Society (DES). Its jurisdiction would not be bound by geographical boundaries but would instead focus on different types of digital media. By acting as a specialized licensing authority, this unit would be responsible for reviewing and approving blind box mechanisms on online platforms, thus offering a targeted solution for regulating blind boxes in the online space. This approach would leverage existing governmental structures while incorporating best practices from abroad to ensure effective regulation and consumer protection.

6.2 Recommendation on Licensing Application

Currently, legal mechanisms in Thailand for regulating blind boxes are not effective due to limitations in the licensing process. The government cannot issue permits to applicants because the characteristics and conditions for allowing blind boxes are not clearly defined. This effectively prohibits blind boxes under Thai law and regulations, which contradicts the original intent of the Gambling Act B.E. 2478.

Therefore, to create regulatory measures for blind boxes that align with existing legal principles, it is crucial to adhere to the original intent of the Gambling Act B.E. 2478, which allows for such games to be legally operated if they are properly authorized.

Therefore, the amendment of the relevant regulations through a ministerial announcement is necessary. For Section 4, adding blind boxes that can result in a win or loss as another category in the List B. The suggestions are as follows:

“ Clause 1 The following games shall be added as games in List B of the Gambling Act, B.E. 2478.

Blind box that can result in a win or loss.

Clause 2 The following shall be added as (22) of Section 4 C.¹²⁶ of the Ministerial Regulation No. 17 (B.E. 2503) issued under the Gambling Act B.E. 2478.

Blind box that can result in a win or loss.”

As for the condition of consumer protection, they shall be stipulated on the application form which should be specifically added to the Ministerial Regulation.

“Clause 3 The form appended to this Ministerial Regulation shall be added as the form for a license to organize gambling namely Blind box that can result in a win or loss to the Ministerial Regulation No. 17 (B.E. 2503) issued under the Gambling Act B.E. 2478....”

The limitations and conditions stipulated on the application form should be:

“Limitations and Conditions Limitations

- 1. The maximum value of a premium that is used as a prize must not be more than [Number] times the value of the main product.*
- 2. The minimum value of all the reward in the box combined must not be less than [Percentage] of the selling price.*
- 3. The price of the blind box must not exceed a set price of [Price] baht, as determined by the Ministry of Interior.*

Conditions:

- 1. The applicant must disclose the odds of obtaining specific items within a blind box*

¹²⁶ C. The following types of gambling may be licensed upon approval by the Minister of Interior:

2. Purchase order, reservation form, or sponsorship letter for the prize items. If not available, the applicant must provide a letter certifying the preparation of prizes”

3. The application must specify the retail platform of selling...”

For Section 8, the Ministry of Interior should add more method of Arrangements for premium gifts or prizes by means of taking a chance in any manner in the course of a business or an occupation by Ministry of Interior’s Urgent Letter in accordance with Section 17 of the Act.

“The blind box, which includes premium gifts or prize which are being distributed in the box.

Conditions:

1. The price of the blind box must not exceed a set price of [Price] baht, as determined by the Ministry of Interior.

2. The applicant must disclose the odds of obtaining specific items within a blind box

3. Purchase order, reservation form, or sponsorship letter for the prize items. If not available, the applicant must provide a letter certifying the preparation of prizes”

4. The application must specify the retail platform of selling

5. Sample of printed advertisements or sample of the container.

...”

REFERENCES

Books

Thai Language

เกรียงไกร เจริญธนาวัฒน์, *หลักกฎหมายว่าด้วยสิทธิเสรีภาพ* (สำนักพิมพ์วิญญูชน จำกัด 2547)

[Kriengkrai Charoenthanavat, *Principles of Law on Rights and Freedoms* (Winyuchon Publication House 2004)].

จี๊ด เศรษฐบุตร, *คำอธิบายกฎหมายแพ่งและพาณิชย์ ว่าด้วยยืม ฝากทรัพย์ เก็บของในคลังสินค้า ประณีประนอม การพนันและขั้นตอน* (โครงการตำราและเอกสารประกอบการสอน มหาวิทยาลัยธรรมศาสตร์ 2531) [Jeed Sethabutr, *Explanation of Civil and Commercial Law on Loans, Deposits, Warehousing, Compromise, Gambling, and Wagering* (The Project for the Promotion of Textbook and Teaching Materials Thammasat University 1988)].

ชาญชัย แสวงศักดิ์, *คำอธิบายกฎหมายจัดตั้งศาลปกครองและวิธีพิจารณาคดีปกครอง* (สำนักพิมพ์วิญญูชนจำกัด 2555) [Chanchai Sawaengsak, *Explanation of the Law Establishing Administrative Courts and Administrative Court Procedures* (Winyuchon Publication House 2012)].

บรรเจิด สิงคะเนติ, *หลักพื้นฐานเกี่ยวกับสิทธิเสรีภาพและศักดิ์ศรีความเป็นมนุษย์* (สำนักพิมพ์วิญญูชน จำกัด 2555) [Banjerd Singkaneti, *Fundamental Principles of Rights, Freedom and Human Dignity* (Winyuchon Publication House 2012)].

วรพจน์ วิสรุตพิชญ์, *สิทธิและเสรีภาพตามรัฐธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช 2540* (สำนักพิมพ์วิญญูชน จำกัด 2543) [Vorapot Visrutpich, *Rights and Freedom According to the Constitution of the Kingdom of Thailand, B.E. 2540* (Winyuchon Publication House 2000)].

สุปัน พูลพัฒน์, *คำอธิบายกฎหมายแพ่งและพาณิชย์ว่าด้วย ยืม ฝากทรัพย์ เก็บของในคลังสินค้า ประณีประนอม การพนันขั้นตอน* (พิมพ์ครั้งที่ 4 กรุงเทพฯ นิติบรรณการ 2532) [Supan Phunphat, *Explanation of Civil and Commercial Law on Loans, Deposits, Warehousing, Compromise, and Gambling and Betting* (4th ed. Bangkok: Nitibannakan Publisher 1989)].

สมพร พรหมหิตะธร, *คู่มือกฎหมายการพนัน พร้อมด้วยพระราชบัญญัติ การพนัน พ.ศ. 2478 พระราชกฤษฎีกา กฎกระทรวงที่เกี่ยวข้อง* (กรุงเทพฯ นิติธรรม 2538) [Somporn Phromhitatorn, *A Guide to Gambling Law Including the Gambling Act of 1935, Royal Decrees, and Relevant Ministerial Regulations* (Bangkok: Nitibannakan Publisher 1995)].

สมยศ เชื้อไทย, *หลักกฎหมายมหาชนเบื้องต้น* (สำนักพิมพ์วิญญูชนจำกัด 2557) [Somyot Chueathai, *Principle of Law Introduction to Public Law* (Winyuchon Publication House 2014)].

English Language

Carl Rohsler, 'UNITED KINGDOM' in Carl Rohsler (ed), *The Gambling Law Review* (Clare Bolton 2021) <https://www.amt-law.com/asset/res/news_2021_pdf/publication_0023219_ja_001.pdf> accessed 28 March 2024.

Hitoshi Ishihara, 'JAPAN' in Carl Rohsler (ed), *The Gambling Law Review* (Clare Bolton 2021) <https://www.amt-law.com/asset/res/news_2021_pdf/publication_0023219_ja_001.pdf> accessed 28 March 2024.

Others Language

K. Andries, N. Carette and N. Hoekx, 'Kansspel' in *Recht en Onderneming* (Recht en onderneming 2006) [K. Andries, N. Carette and N. Hoekx, 'Game of Chance' in *Law and Business* (Nederlands 2006)].

Journal Articles

Thai Language

เจตริน ใจตรง, 'ปัญหาการบังคับใช้กฎหมายเกี่ยวกับการซื้อขายสินค้าประเภทกล่องสุ่ม' (มหาวิทยาลัยรามคำแหง 2565) <<http://www.lawgrad.ru.ac.th/Abstracts/1708>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [Jetrin Jaithong, 'Problems in Enforcing the Law Regarding Trading in Random Box Products' (Ramkhamhaeng University 2022) <<http://www.lawgrad.ru.ac.th/Abstracts/1708>> accessed 20 July 2024].

อธิคม อินทุตติ, ‘กฎหมายเกี่ยวกับการพนันในประเทศไทย’ (2524) 2 วารสารนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ 122 [Athikom Intuputi, ‘Laws Regarding Gambling in Thailand’ (1981) 2 Thammasat Law Journal 122].

อณัญญา สวัสดิ์พาณิชย์ และปรมาภรณ์ วีระพันธ์, ‘การคุ้มครองผู้บริโภคในสัญญาซื้อขายสินค้าแบบกล่องผ่านระบบออนไลน์’ (2566) 2 วารสารวิจัย มข. สาขามนุษยศาสตร์และสังคมศาสตร์ (ฉบับบัณฑิตศึกษา) 37 <<https://so04.tci-thaijo.org/index.php/gskkuhs/article/view/266605>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [Anunya Sawatpanich and Paramaporn Weeraphan, ‘The Consumer Protection in Selling and Purchasing The Mystery Box Via Online System’ (2023) 2 KKU Research Journal of Humanities and Social Sciences (Graduate Studies) 37 <<https://so04.tci-thaijo.org/index.php/gskkuhs/article/view/266605>> accessed 20 July 2024].

English Language

Andrei Shleifer, ‘Understanding Regulation’ (2005) 11 European Financial Management. Hannah Pitt and others, ‘Factors That Influence Children’s Gambling Attitudes and Consumption Intentions: Lessons for Gambling Harm Prevention Research, Policies and Advocacy Strategies’ (2017) 14 Harm Reduction Journal <<https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-017-0136-3>> accessed 13 April 2024.

Leon Y. Xiao, ‘Regulating Loot Boxes as Gambling? Towards a Combined Legal and Self-Regulatory Consumer Protection Approach’ (2021) 4(1) Interactive Entertainment Law Review <https://www.researchgate.net/publication/349713047_Regulating_Loot_Boxes_as_Gambling_Towards_a_Combined_Legal_and_Self-Regulatory_Consumer_Protection_Approach_Interactive_Entertainment_Law_Review_41_27-47> accessed 28 March 2024.

— ‘Blind Boxes: Opening Our Eyes to the Challenging Regulation of Gambling-Like Products and Gamblification and Unexplained Regulatory Inaction’ (2022) 26(5) Gaming Law Review <<https://www.liebertpub.com/doi/10.1089/glr.2022.0012>> accessed 28 March 2024.

Lige Fu and Zheyu Zhao, 'Chinese Blind Box Market Needs Regulating' (2022) *Advances in Economics, Business and Management Research* <<https://www.atlantispress.com/proceedings/icemed-22/125975416>> accessed 28 March 2024.

Richard T. A. Wood and Mark D. Griffiths, 'Understanding Positive Play: An Exploration of Playing Experiences and Responsible Gambling Practices' (2015) 31 *Journal of Gambling Studies* <<https://link.springer.com/article/10.1007/s10899-014-9489-7>> accessed 14 April 2024.

Virgil W. Peterson, 'Gambling. Should It be Legalized' (1949) 3 *Journal of Criminal Law and Criminology* <<https://www.jstor.org/stable/1138545>> accessed 13 April 2024.

Blogs and Websites

Thai Language

— 'การควบคุมและความหมายของการพนัน' (ThaiHealth, 28 กุมภาพันธ์ 2554) <<https://www.thaihealth.or.th/?p=232477>> สืบค้นเมื่อ 5 เมษายน 2567 ['Regulation and Definition of Gambling' (ThaiHealth, 28 February 2011) <<https://www.thaihealth.or.th/?p=232477>> accessed 5 April 2024].

— 'เกินต้าน! พิมรี่พาย ขายกล่องสุ่มราคา 1 หมื่น ปิดยอด 100 ล้าน ได้ใน 5 นาที' (Matichon Online, 5 ธันวาคม 2564) <https://www.matichon.co.th/social/news_3073850> สืบค้นเมื่อ 5 เมษายน 2567 ['Too Much to Resist! Pimryprie Sells Random Boxes for 10,000 Baht, Closes 100 Million in 5 Minutes' (Matichon Online, 5 December 2021) <https://www.matichon.co.th/social/news_3073850> accessed 5 April 2024].

— 'ทำไม "กล่องสุ่ม" ถึงเร้าใจ ผิดกฎหมายไหม ซื้ออย่างไรไม่ให้ถูกโกง' (ฐานเศรษฐกิจ, 23 มีนาคม 2566) <<https://www.thansettakij.com/news/general-news/559763>> สืบค้นเมื่อ 20 กรกฎาคม 2567 ['Why Are "Mystery Boxes" So Exciting? Are They Illegal? How to Buy Them Without Getting Scammed?' (Thansettakij, 23 March 2023) <<https://www.thansettakij.com/news/general-news/559763>> accessed 20 July 2024].

- ‘เปิด “กล่องสุ่มพิมรี่พาย” มีอะไรบ้าง ใครผิดหวัง ใครสมหวัง โซเชียลเสียงแตก’ (Matichon Online, 23 ธันวาคม 2564) [‘What’s In It? Who’s Disappointed? Who’s Fulfilled? Social Media Divided’ (bangkokbiznews, 23 December 2021) <<https://www.bangkokbiznews.com/lifestyle/978838>> accessed 5 April 2024].
- ‘เยาวชนไทยติดพนันงอมแงมกว่า 3.64 ล้านคน ห่วงพนันบน “อี-สปอร์ต” ดึงนักเล่นหน้าใหม่’ (กรมสุขภาพจิต, 13 กันยายน 2562) <<https://dmh.go.th/news-dmh/view.asp?id=29953>> สืบค้นเมื่อ 5 เมษายน 2567 [‘Over 3.64 Million Thai Youths Are Heavily Addicted to Gambling, Concerns Arise Over “E-Sports” Gambling Attracting New Players.’ (Department of Mental Health, 13 September 2019) <<https://dmh.go.th/news-dmh/view.asp?id=29953>> accessed 5 April 2024].
- ‘สุดเซอร์ไพรส์! กล่องสุ่มพิมรี่พาย 1 แสน เปิดออกมาได้รถป้ายแดง (Matichon Online, 1 ธันวาคม 2564) <https://www.matichon.co.th/social/news_3068005> สืบค้นเมื่อ 5 เมษายน 2567 [‘Super Surprise! 100,000 Random Box of Pimryprie. Open It and Get a Brandnew Car’ (Matichon Online, 1 December 2021) <https://www.matichon.co.th/social/news_3068005> accessed 5 April 2024].
- Spirit Channel, ‘เปิดกล่องสุ่ม ลุ้นของดี ๆ จาก Lazada’ (YouTube, 7 สิงหาคม 2563) <<https://www.youtube.com/watch?v=VMIJER2S5o0>> สืบค้นเมื่อ 5 เมษายน 2567 [Spirit Channel, ‘Open a random box and get a chance to win good things from Lazada’ (YouTube, 7 August 2020) <<https://www.youtube.com/watch?v=VMIJER2S5o0>> accessed 5 April 2024].
- yugioh2500, ‘มารู้จัก “Lazada Secret Box” กล่องแห่งความลับลาซาด้า’ (iReview.in.th, 11 พฤษภาคม 2559) <<https://ireview.in.th/lazada-secret-box>> สืบค้นเมื่อ 5 เมษายน 2567 [yugioh2500, ‘Get to Know “Lazada Secret Box”, a Box of Lazada Secrets’ (iReview.in.th, 11 May 2020) <<https://ireview.in.th/lazada-secret-box>> accessed 5 April 2024].

English Language

- ‘Chance Listings Policy’ (eBay) <<https://www.ebay.com/help/policies/prohibited-restricted-items/chance-listings-policy?id=4311>> accessed 5 April 2024.
- ‘How Does Loot Crate Work? Longer Versions’ (LOOTCRATE) <<https://lootcrate.com/pages/how-it-works>> accessed 28 March 2024.

- ‘Loot Boxes Within Video Games’ (UK Gambling Commission, 24 November 2017) <<https://www.gamblingcommission.gov.uk/news/article/loot-boxes-within-video-games>> accessed 5 April 2024.
 - ‘Pop Mart, a THB 20 Billion Art Toys Business, Officially Opens First Flagship Store in Thailand on September 20th at CentralWorld’ (Entertainment News, 20 September 2023) <<https://www.ryt9.com/en/prg/271286>> accessed 13 April 2024.
 - ‘The Immersive and Addictive Technologies Inquiry’ (UK Gambling Commission, 2017) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/immersive-and-addictive-technologies/written/94963.pdf>> accessed 5 April 2024.
 - ‘Virtual currencies, eSports and social gaming – discussion paper’ (UK Gambling Commission, 2016) <<https://www.gamblingcommission.gov.uk/about-us/page/virtual-currencies-esports-and-social-gaming-discussion-paper>> accessed 5 April 2024.
 - ‘2015 CESA game white paper’ (CESA, 2015) <https://www.cesa.or.jp/survey/book/hakusho/detail001_2015.html> accessed 5 April 2024.
- Charles Li, Vivian He and Kaiying Wu, ‘Gaming Law 2023 China Trends and Developments’ (*Chambers and Partners*, 28 November 2023) <<https://practiceguides.chambers.com/practice-guides/gaming-law-2023/china/trends-and-developments>> accessed 28 March 2024.
- Culture, Media and Sport Committee, ‘The Gambling Act 2005: A bet worth taking?’ <<https://publications.parliament.uk/pa/cm201213/cmselect/cmcmums/421/42103.htm>> accessed 5 April 2024.
- House of common, Culture, media and sport Committee, ‘The Government’s Proposals for Gambling’ (UK Parliament) <<https://publications.parliament.uk/pa/cm200102/cmselect/cmcmums/827/827.pdf>> accessed 5 April 2024.
- Huaxia, ‘China’s Pop Toy Market Maintains Rapid Growth’ (Xinhuanet, 2 November 2023) <<https://english.news.cn/20231102/3f95532c51b14242b75195bf433bd068/c.html>> accessed 28 March 2024.
- Kay Dervishi, ‘Other Games of chance and Skill on Albany’s Agenda’ (City & State New York, 18 June 2018) <<https://www.cityandstateny.com/policy/2018/06/other->

games-of-chance-and-skill-on-albanys-agenda/178366/> accessed 14 April 2024.

Tracey Tang, 'A Middle-ground Approach: How China Regulates Loot Boxes and Gambling Features in Online Games - Gaming - China' (mondaq, 5 April 2024) <<https://www.mondaq.com/china/gaming/672860/a-middle-ground-approach-how-china-regulates-loot-boxes-and-gambling-features-in-online-games>> accessed 5 April 2024.

Thai PBS World's General Desk, 'Lifting the Lid on Thailand's 'Mystery Box' Trend' (Thai PBS World, 28 February 2021) <<https://www.thaipbsworld.com/lifting-the-lid-on-thailands-mystery-box-trend/>> accessed 28 March 2024.

Sebastian Schwiddessen, 'Loot Boxes in Japan: Legal Analysis and Kompu Gacha Explained' (Lexology, 2 August 2018) <<https://www.lexology.com/library/detail.aspx?g=9207df10-a8a2-4f67-81c3-6a148a6100e2>> accessed 28 March 2024.

Official Publications of Thai Government on Gambling Laws

Thai Language

กฎกระทรวง ออกตามความในพระราชบัญญัติการพนัน พุทธศักราช 2478 ฉบับที่ 17 พ.ศ. 2503 [Ministerial Regulation Issued under the Gambling Act, B.E. 2478 No. 17 B.E. 2503].

กรมการปกครอง กระทรวงมหาดไทย; 'กล่องสุ่มสินค้ากับกฎหมายว่าด้วยการพนัน' (dopa.go.th) <<https://www.dopa.go.th/assets/modules/news/uploads/e31e9c67d83462e76e417f9f76e489c163242fb309a2686483011939538698.pdf>> สืบค้นเมื่อ 28 มีนาคม 2567 [Department Of Provincial Administration, 'Blind Boxes and Gambling Laws' (dopa.go.th) <<https://www.dopa.go.th/assets/modules/news/uploads/e31e9c67d83462e76e417f9f76e489c163242fb309a2686483011939538698.pdf>> accessed 28 March 2024].

สำนักงานสอบสวนและนิติการ กรมการปกครอง กระทรวงมหาดไทย, คู่มือการปฏิบัติงานตามกฎหมายว่าด้วยการพนัน <http://ita1.dopa.go.th/ita/ita_files/คู่มือการปฏิบัติงานตามกฎหมายว่าด้วยการพนัน_ch13.pdf> สืบค้นเมื่อ 16 มิถุนายน 2567 [Investigation and Legal Affairs Bureau, Department of Provincial Administration, Ministry of

Interior, Manual for Legal Practices Concerning Gambling <http://ita1.dopa.go.th/ita/ita_files/คู่มือการปฏิบัติงานตามกฎหมายว่าด้วยการพนัน_ch13.pdf> accessed 16 June 2024].

สำนักงานคณะกรรมการกฤษฎีกา, บันทึก เรื่อง การพนันตามกฎหมายต่างประเทศ (เรื่องเสร็จที่ 7/2467) 1 <<https://comment.ocs.go.th/main/download/dlf/pdf/เรื่องเสร็จที่%20๐๐๐๗-๒๔๖๗>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [Office of the Council of State, Memorandum on Gambling under Foreign Law Principles (Case No. 7/2467) 1 <<https://comment.ocs.go.th/main/download/dlf/pdf/เรื่องเสร็จที่%20๐๐๐๗-๒๔๖๗>> accessed 20 July 2024].

หนังสือสั่งการกระทรวงมหาดไทยที่ มท. 0307.4/ว 1733 เรื่อง แนวทางการควบคุมวันอนุมัติ อนุญาต จัดให้มีการเล่นการพนัน, 20 เมษายน 2555 [Ministry of Interior Order Letter at MorTor. 0307.4/Wor 1733 Re: Guidelines for Controlling the Approval Date for Permitting Gambling, 20 April 2012].

Official Publications of People's Republic of China

Mandarin Chinese Language

上海市市场监督管理局关于印发《上海市盲盒经营活动合规指引》的通知2022 <<http://scjgj.sh.gov.cn/210/20220114/2c9bf2f67e29b4b3017e5765fe447e2e.html>> 访问 28 March 2024 [Notice of the Shanghai Municipal Administration for Market Regulation on the Issuance of the “Compliance Guidelines on Blind Box Business Activities in Shanghai” 2022 <<http://scjgj.sh.gov.cn/210/20220114/2c9bf2f67e29b4b3017e5765fe447e2e.html>> accessed 28 March 2024].

四川省邮政管理局, 四川局召开全省邮政管理系统监管应急及舆情应对线上研讨会 2021 <http://www.spb.gov.cn/xw/dttx_15079/202105/t20210531_3916722.html> accessed 5 April 2024. [Sichuan Provincial Postal Administration, Sichuan Bureau held an online seminar on the emergency regulatory response of the provincial postal management system and responding to public opinions 2021] <http://www.spb.gov.cn/xw/dttx_15079/202105/t20210531_3916722.html> accessed 5 April 2024.

Research Reports and Personal Studies Report

Thai Language

นันทวัฒน์ บรมานันท์, ‘กฎหมายเกี่ยวกับการพนันในประเทศไทย’ (รายงานผลการวิจัยเสนอต่อสำนักงานกองทุนสนับสนุนการสร้างเสริมสุขภาพ (สสส.) 2554) <<https://www.gamblingstudy-th.org/pdf/doc/research/Nantawat2554.pdf>> [Nantawat Boramanand, ‘Gambling Laws in Thailand’ (Submitted to ThaiHealth 2011) <<https://www.gamblingstudy-th.org/pdf/doc/research/Nantawat2554.pdf>> accessed 14 April 2024].

นัฏพร กรกนกมล, ‘มาตรการทางกฎหมายในการควบคุมการซื้อขายสิ่งของในเกมออนไลน์ในโทรศัพท์มือถือ โดยระบบกล่องสุ่ม (loot boxes) ในประเทศไทย’ (รายงานส่วนบุคคล สำนักงานคณะกรรมการกฤษฎีกา 2561) <<https://lawforasean.krisdika.go.th/File/files/1531771279.55f87242b1113a9e9af0a424034b05e7.pdf>> สืบค้นเมื่อ 20 กรกฎาคม 2567 [Natthaporn Korkanokkamon, ‘Legal Measures to Control the Purchase of Online Game Items on Mobile Phones by the Drum System (Loot Boxes) in Thailand’ (Personal Studies Report Office of the Council of State 2019) <<https://lawforasean.krisdika.go.th/File/files/1531771279.55f87242b1113a9e9af0a424034b05e7.pdf>> accessed 20 July 2024].

English Language

Peter Naessens, ‘Research Report on Loot Boxes’ (Submitted to the Belgian Gaming Commission, Brussels 2018) <<https://www.gamingcommission.be/sites/default/files/2021-08/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf>> accessed 14 April 2024.

Theses

Thai Language

ชนภัทร สุดาวงค์, ‘ข้อจำกัดทางกฎหมายในการควบคุมกล่องสุ่มในเกมออนไลน์’ (วิทยานิพนธ์ นิติศาสตรมหาบัณฑิต จุฬาลงกรณ์มหาวิทยาลัย 2565) <<https://digital.car.chula.ac.th/>

chulaetd/6352> สืบค้นเมื่อ 16 เมษายน 2567 [Chonnapat Sudawong, ‘The legal Limitation in Regulating Loot Boxes in Online Gaming’ (LL.M. Thesis Chulalongkorn University 2022) <<https://digital.car.chula.ac.th/chulaetd/6352>> accessed 16 April 2024].

ทณงศักดิ์ ถิ่นศรีนวล, ‘กฎหมายเกี่ยวกับการพนัน’ (ม.ป.ท. มหาวิทยาลัยธรรมศาสตร์ 2529) [Tanongsak Thinsrinaul, ‘Laws on Gambling’ (LL.M. Thesis Thammasat University 1986)].

English Language

James Alastair Warren, ‘Gambling, the State and Society in Siam, c. 1880-1945’ (PhD. Thesis University of London 2007).

Case Law

Seay v. Eastwood [1976] 3 All ER 153, per Lord Wilberforce.

Tokyo High Court, 28 November 2006.

Supreme Court of Thailand Judgments Nos. 2542/2527, 453-460/2501, and 142/2479.

BIOGRAPHY

Name	Tunrada Wiangket
Date of Birth 23 June 1998	18 September 1993
Educational Attainment	2017: Bachelor of Law, Thammasat University

