

Fantasy Sports in the UAE: Legal or a Red Card

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One of the most popular online games in the world (some estimates state there are close to 40 million players in the United States alone) continues to be plagued by the age old query of whether it is a game of chance – and therefore illegal as gambling – or a game of skill.

The confusion arose from the fact that George W. Bush, when trying to stop the early spread of unlicensed internet gambling, excluded fantasy sports from the Federal Unlawful Internet Gambling and Enforcement Act (UIGEA). In brief, this law states that fantasy sports are exempt from the law, as long as people are not betting on the outcome of a single game or the performance of a single player. This allowed each state to determine its own position. The ensuing confusion has led to a diverse opinion amongst the states in the USA, and more particularly the Attorney Generals in each state. There is a contrasting approach between those states that permit the online activity, those that restrict it to players with no ability to pay and win, and those that do not permit it at all.

So how would fantasy sports fare in the Middle East?

Pursuant to the Constitution of the UAE, Islam is the official religion. There is also a general prohibition on gambling. This provides some context in which to understand references in the law to ‘sin’ and in determining conduct that conflicts with ‘public morality’.

The key source of law relating to gambling is Federal Law No. 3 of 1987 (the “Penal Code”). Article 413 of the Penal Code defines gambling as *“a game in which each party agrees that if he loses, he will pay the party who wins the game an amount of money or anything else agreed upon.”* The Penal Code makes participation in gambling an offence, punishable by imprisonment for a term not exceeding two years (if it takes place in public) and/or a fine of up to AED20,000. This provision is replicated in the laws of several Emirates as well.

Interestingly, whilst some US states have been arguing that fantasy sports may not constitute gambling because of the (claimed) high element of skill involved in creating a team, this element would not be relevant in the UAE. The simple fact that the stake of the losing competitor is used to pay the winner would be sufficient to create an offence under UAE law. Because most fantasy sports contests include entry fees and prizes, these contests would be deemed illegal under UAE law.

In the UAE, issues clearly lie with the creation of any game where the object is to win money. There can be no doubt that paying to play in a fantasy football tournament with the aim of collecting winnings would be considered gambling.

Opening or managing a venue for gambling, or organizing a game of chance in a public place or in a venue for gambling, is also an offence, with the penalty being imprisonment for a term of up to ten years.

Gambling and the Cyber Crimes Law

There have been ongoing issues, as noted above, in many overseas jurisdictions, arising from the difficult distinction between putting up a stake on your fantasy football team and outright gambling on sport itself. In the UAE, the position is not so difficult.

Federal Law No 5 of 2012 on Combating Cybercrimes (the “Cyber Crimes Law”) contains prohibitions in

relation to gambling and sets out penalties including imprisonment and/or fines ranging from AED250,000 to AED500,000. In particular, Article 17 of the Cyber Crimes Law states sets out the penalties for “*whoever establishes, manages or runs a website or transmits, sends, publishes or re-publishes through the computer network pornographic materials or gambling activities and whatever that may afflict the public morals*” and for anyone who “*produces, draws up, prepares, sends or saves for exploitation, distribution, or display to others through the computer network, pornographic materials or gambling activities and whatever that may afflict the public morals.*”

The definition of gambling is not provided, leaving us with only the definition within the Penal Code (above). But clearly the act of simply setting up a fantasy sports league in the UAE would attract attention, as would distributing it (for example, posting the link on social media, even if you did not create the fantasy sports league yourself), or displaying it to others (this may mean something as innocuous as merely sharing your success in a fantasy sports league to others in the UAE).

What if there were no stakes involved?

Interestingly, the key element that determines whether an activity is gambling is the payment by the loser to the winner. So what if there was no payment required for the entry and/or no prizes to be won?

The position in this respect is obviously improved for the players and the operators, but we consider that it remains slightly unclear. If there is no payment by a loser then there would be an argument that no gambling has occurred and hence there is no issue under the Penal Code. However Article 17 of the Cyber Crimes Law does also extend to “*whatever ... may afflict the public morals*”. Article 15 adds that it is prohibited to use the internet or IT services for “*encouragement of sin*”. Given the status of gambling itself as a sin, if a game were developed based on a recognized form of gambling but were free to play, would the authorities consider that an activity afflicting public morals or promoting sin? The answer is probably no, they would not. However we do believe that the continued or emphasised use of ‘gambling-like activities’, even within a free game, could very easily attract attention by members of the public and could result in a complaint being raised with the authorities. Ancillary to this, we believe that whilst the provision of a prize to the winner may not alter that position legally, provided that the losers were not required to pay towards, or otherwise supply, any part of that prize, the fact that a person could win anything at all might also increase the likelihood of the authorities investigating the game if a complaint were raised.

The ongoing game vs. the daily game? Will it make any difference locally?

The Attorney General in Texas, in discussing the potential new law, has said that whilst compiling a fantasy team for a season may conceivably take quite a bit of skill, the daily fantasy game, now growing in popularity in many countries, is much different. This is because the chances of something happening to a particular player during a game, or something unrelated to the game or which took a player out of a game entirely could substantially impact the outcome. If this were to happen in one game during the course of a full season, it may not vastly affect the outcome of the season. However, if one is taking a chance on a single game on a particular day, it could have a significant impact on the game and therefore on the results.

This analysis, whilst interesting from a legal perspective, has no relevance in a jurisdiction where the provision of a stake is the indicator for the illegal activity. Hypothetically, for games where no stake is required, the higher level of skill that is involved in a season of fantasy sport could make a difference in the analysis if the authorities were to be asked to determine whether the game was encouraging sin (as opposed to the daily fantasy games where there is an significantly increased element of chance).

Practical considerations - the TRA

The Telecommunications Regulatory Authority (TRA) has established the “Internet Access Management” policy which, amongst its powers, requires internet service providers (in this case du and Etisalat) to block access to websites providing illegal content or content that is inconsistent with the moral or public norms

of the UAE.

The practical ramification of this is that many fantasy sports websites are blocked in the UAE. Indicating that the government does not have an issue with fantasy sports as a game – as long as no stakes are required – websites such as EA Sports Fantasy Premiere League and ESPN Fantasy Football remain available in the region.

Adding fantasy to a brand - other legal issues

Finally, it is important to remember that any competition that is designed to promote a brand would generally require the approval of the relevant Department in each Emirate. The running of a fantasy sports league, even without a stake, that is designed to promote a brand and results in a prize for a winner may require a permit. This would be even more relevant if there is a requirement to purchase goods in order to enter, and this fact may give rise to a more considered analysis of the competition by the authorities.

Conclusion

A game of chance or a game of skill – it can be argued that chance plays a role in everything in life. However the strict legal regime that applies to gambling and associated conduct in the UAE, coupled with the high penalties for infringing the Cyber Crimes law, mean that the risk of undertaking any form of fantasy sports in the UAE is probably not worth the potential pay out.

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