

CASINO LAW IN MACAU: FROM COMPETITION TO CONSUMER PROTECTION?

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Abstract

Macau became a world-wide major gaming market with a specific renewed regulatory framework. Based upon the theory of the 'privileged business', gaming is a legal monopoly of the Executive of Macau SAR (China), and the exploitation of this activity is only available to some concessionaires that comply with strict requirements concerning suitability of actors and financial capacity. In return for gaming concessions, the concessionaires pay significant premiums, taxes and contributions, and they are bound to a program of relevant investments in the Region. In the operation of casinos, concessionaires are subject to a high degree of control by the Executive within a relationship ruled by a principle of full disclosure and straight cooperation, and they have to comply with anti-money laundering regulations. Moreover, in order to assure accomplishment of their obligations to the Region, concessionaires provide significant financial guarantees. Despite the restrictive regulatory framework in the sense that gaming business still remains a public monopoly, the new legal framework of casino gambling has introduced competition in the gaming marketplace. Monopoly has been replaced by oligopoly and, moreover, casino regulations provide that junket promoters can work with more than one concessionaire, and that casino credit operations are not considered game usury under certain circumstances.

The introduction of competition in the casino marketplace may improve consumer welfare in the gaming sector, according to the rationale of traditional theories that justify the supremacy of free competition over monopoly in terms of promoting consumer welfare. However, the sensitive nature of casino gambling, regarding the status of consumer irrational choice, could perhaps justify a more protective legal environment from a viewpoint of consumer protection. This is

particularly sensitive concerning the liberalisation of casino credit operations, for which no interest rate limit seems to be provided. Another dimension of casino consumer protection concerns the fairness of the game, so that the consumer is granted a reasonable chance to place a winning bet. Finally, on-line gaming clearly places a serious demand for consumer protection.

Keywords: casino gaming; regulations; competition; consumer protection.

Introduction

Gaming, especially gambling in casinos, is a growing segment of the entertainment industry. However, gaming, as the activity of playing at games for money, has a sensitive nature for purposes of legal regulation. Gaming includes several kinds of games, such as games of fortune (e.g., Bacará, Black Jack, Fantan, Poker, Roleta), pari-mutuels betting (e.g., Greyhound, Horse Racing), and lotteries (Chinese Lotteries – Pacapio; instant lotteries; sports lotteries), each of them having its own rules. For purposes of legal regulation, it is usually distinguished among casino games of fortune, betting pari-mutuels and lotteries, and interactive games.

Gaming is a sensitive activity from the viewpoint of consumer protection. In fact, this activity is capable of exploiting the irrationality of consumers, and it can lead to public health concerns, not to mention its traditional association with illegal activities. Due to its sensitive nature, commercial gaming, especially casino gambling, is fully prohibited in several jurisdictions, or it is submitted to restrictive regulatory models that are based upon the understanding of gaming as a “privileged business” (i.e. as a State monopoly, access to the gaming market can be unilaterally prohibited or restricted by Public authorities). This hard traditional approach to the gaming business has however been softened by the evolution of gaming industries as becoming a part of the legitimate leisure and entertainment business. Nonetheless, a major concern of the regulatory framework is or should be consumer protection due to the irrationality dimension of this activity.

Drafted after our contribution to the First Conference of the Asian Academic Network on Commercial Gaming¹, this paper revisits the regulatory framework of casino games of fortune, i.e. games played at casinos (or casino gambling), in Macau, as an evolving world-wide major gaming market.² In Macau, gaming is a legal monopoly

1 Alexandre L.D. Pereira, ‘Casino Gaming Law in Macao’, in *Law, Regulation, and Control Issues of the Asian Gaming Industry, Proceedings of the First Conference of the Asian Academic Network on Commercial Gaming*, Institute for the Study of Commercial Gaming, University of Macau, 2006, pp. 141-155.

2 For a comprehensive study of gaming and casino gambling in Macau, concerning types and



of the Executive of Macau SAR, and the exploitation of this activity is only available to three concessionaires that comply with strict requirements concerning suitability of actors and financial capacity. In return for gaming concessions, the concessionaires pay significant premiums, taxes and contributions, and are bound to a program of relevant investments in the Region. In the operation of casinos, these concessionaires are subject to a high degree of control by the Executive within a relationship ruled by a principle of full disclosure and straight cooperation; in order to assure accomplishment of their obligations to the Region, concessionaires provide significant financial guarantees.

The new legal framework of casino gambling has introduced competition in the gaming marketplace. Monopoly has been replaced by oligopoly, i.e. the new legal framework has introduced competition in the casino marketplace, as only a few years ago gaming services were provided by one single concessionaire in a situation of monopoly, but now the new legal framework has created room for three gaming concessionaires. On the other hand, casino regulations provide that junket promoters can work with more than one concessionaire, and moreover casino credit operations are not considered game usury under certain circumstances.

Despite the restrictive regulatory framework in the sense that gaming business still remains a public monopoly, the introduction of competition in the casino marketplace may benefit the consumer of gaming services, according to the rationale of traditional theories that justify the supremacy of free competition over monopoly in terms of promoting consumer welfare. However, the sensitive nature of casino gambling, regarding the status of consumer irrational choice, could perhaps justify a more protective legal environment from a viewpoint of consumer protection. This is particularly sensitive concerning the liberalisation of casino credit operations, for which no interest rate limit seems to be provided. Another dimension of casino consumer protection concerns the fairness of game, so that the consumer is granted a reasonable chance to have a winning bet.

§ 1. Sources of Macau Gaming Law

The regulatory system of Casinos in Macau is shaped by a public policy perspective that spotted Macau as a world leading provider of gaming services with a view to promote the development of the Region. Upon the reunification with PR China, the legal system of Macau has been reconfigured in 1999. Macau is since then a Special Administrative Region of the PR China, and the main features

rules of games, history, economy, society, politics and public regulation and supervision *see* Governo de Macau, *O Jogo em Macau*, Inspecção dos Contratos de Jogos, Macau, 1985. On Macau gaming law see also, notably, António Katchi, 'O regime jurídico da exploração de jogos de fortuna ou azar em Macau', *Boletim da Faculdade de Direito* 15; Manuel M. E. Trigo, 'O Jogo e a Aposta no Código Civil de Macau de 1999 e A Eficácia das Obrigações', Jorge A. F. Godinho, 'Crédito para jogo em Macau', *Boletim da Faculdade de Direito* 25 (2008).

of the legal system of Macau are provided in the Basic Law, which establishes a high degree of autonomy for the Region. Nonetheless, most of the Portuguese legal legacy has been accepted, namely the Civil Code, the Commercial Code, the Criminal Code, and the Administrative Code.

These Codes are of greatest importance for understanding gaming law in Macau. In special, the Commercial Code provides the basic legal lexicon of gaming companies and commercial contracts as well as other relevant notions, such as, e.g. dominant shareholders, agreements outside the company, insurance contracts, and banking independent guarantees.³ Other Codes are also of importance due the complex and multidimensional nature of gaming law.⁴

As for the specific legal framework of casino gaming in Macau, it is established by several special laws. Law 16/2001 is the “basic law” of casino gaming providing the legal framework for the operation of casino games of fortune. This general framework has been implemented by administrative Regulation 26/2001 (amended by Administrative Regulation 4/2002), concerning the regulation of the public bidding of the gaming concession contracts. On the other hand, Administrative Regulation 6/2002 defines the eligibility of the Junket promoter of casino games of fortunes, and Law 5/2004 establishes the legal framework of casino gaming credit operations, and Law 8/96/M, of July 22, provides several criminal offences and administrative infractions to gaming activities.

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- 3 On the Commercial Code of Macau and other relevant economic legislation, see A.D. Pereira, *Business Law: A Code Study – The Commercial Code of Macau*, Coimbra, 2004; J.H. Fan / A.D. Pereira, *Commercial and Economic Law – Macau, International Encyclopaedia of Laws series*, The Hague, Kluwer Law International, 2005. See also the ‘Study Journeys’ (Jornadas) on the Project of Commercial Code, *Boletim da Faculdade de Direito de Macau*, n.º 9. Specifically on gaming contracts, see Mota Pinto, Pinto Monteiro e Calvão da Silva, *Jogo e Aposta. Jeu et Pari. Game and Bet*, Coimbra, SCML, 1982, e *Boletim da Faculdade de Direito da Universidade de Macau*, ano XII, n.º 25, 2008; Manuel M. E. Trigo, ‘Dos contratos em especial e do jogo e aposta no Código Civil de Macau de 1999’, *Nos 20 anos do Código das Sociedades Comerciais: Homenagem aos Profs. Doutores A. Ferrer Correia, Orlando de Carvalho e Vasco Lobo Xavier*, coord. António Pinto Monteiro, Coimbra, Coimbra Editora, 2007, vol. 3, p. 345-396.
- 4 On gaming and casino law see Anthony N. Cabot, *Casino Gaming: Policy, Economics and Regulation*, UNLV, International Gaming Institute, Las Vegas, Nevada, 1996; Dixon, *From Prohibition to Regulation: Bookmaking, Anti-Gambling and the Law*, Oxford, 1991; Robert Jarvis (et al.), *Gaming Law: Cases and Materials*, Mathew Bender, 2003; N. Rose, *Gambling and the Law*®, Gambling Times, Inc.: 1986; *Internet Gambling*, 2005; *The Global Gambling Report, Global Gambling Comes of Age*, Global Betting & Gaming Consultants, 2nd Annual Review of the Global Betting and Gaming Market, July 2002; *Nevada Gaming Law, The Authoritative Guide to Nevada Gaming Law*, 3rd ed., Las Vegas, Lionel Sawyer & Collins, 2000; *International Casino Law*, (eds.) Anthony Cabot, William Thompson, Andrew Tottenham, Carl Braunlich, Editors, The Institute for the Study of Gambling and Commercial Gaming, University of Nevada, Reno, 3^d ed., 1999.

On the other hand, casino operators have to comply with anti-money laundering regulations⁵. In fact, SAR Macau has implemented new anti-money laundering and counter-terrorism financing legislations, which have been enacted by Law 2/2006 and complemented by Administrative Regulation 7/2006 and related regulations, with a view to meet certain international standards concerning anti-money laundering and counter-terrorism legislation.⁶ These regulations aim at protecting businesses from being misused for money laundering and terrorism financing, as well as attempt to avoid the potential that the proceeds of the crime are used to finance criminal activities.

§ 2. Economics of Casino Gaming

According to the Gaming Inspection and Coordination Bureau, casino gaming is probably the most important industry in the economy of Macau. To begin with, it is the main source of tax revenues. The evolution of gaming tax revenues in Macau is quite significant: while in 1999 gaming tax revenues were 4.7 billion MOP (47% of global tax revenues), in 2003 they were 10.5 billion MOP (74% of global tax revenues), and these figures have increased last year. In 2003, casinos represented 98% of gaming tax revenues, and Bacarat VIP 77% of casino tax revenue.

Then, gaming industries provide large contributions to projects of public interest, and they offer employment opportunities. For example, the casino industry of Macau has generated more than 10,000 job opportunities and corresponds approximately to 5% of the working population. On the other hand, gaming promotes tourism and related activities in the Region. This is illustrated by the fact that Macau receives annually around 10 million visitors, 56% coming from mainland China, 32% from Hong Kong and 5% from Taiwan, and gaming entertainment services are probably the main attraction for visiting tourists.

§ 3. The Sensitive Nature of Casino Gambling: A 'Privileged Business' of the Entertainment Industry

Despite the economic importance of the gaming industry in Macau, public policy concerns feature a legal framework that takes into consideration the sensitive nature of gaming. Casino gaming law in Macau follows a restrictive

5 Preventive Measures against Crimes of Money Laundering and Terrorist Financing, Instruction no. 2/2006, by Gaming Inspection Coordination Bureau.

6 See Jorge Godinho, *Estratégias patrimoniais de combate à criminalidade: o estado actual na Região Administrativa Especial de Macau [Financial strategies of crime control: the current status in the Macau SAR]*, Leonel Alves e Paulo Cardinal (org.), Primeiras Jornadas de Direito e Cidadania da Assembleia Legislativa, Coimbra Editora, Coimbra, 2009, pp. 139-177.

regulatory model, following the theory of gaming as a “privileged business”. At the same time, the regulatory model in force in Macau seems to be influenced by the evolution of the gaming industry, in which the gaming enterprise becomes a “tourism enterprise”⁷. However, it does not mean the full liberalisation of casinos, as casino gaming is still perceived as a “privileged business”, in the sense that, as a Nevada Court ruled in 1931, the “State may regulate or suppress it without interfering with any of those inherent rights of citizenship which is the object of government to protect and secure” (*Grimes v. Board of Commissioners*, 1931)⁸.

In today’s complex societies old approaches that used to base the restriction or even eradication of gaming upon moral notions of sin and evil are gradually replaced by new perspectives that approach gaming regulation from the view point of public health concerns, in the sense that gaming can be an addiction and become an illness, as gamblers can get addicted to the adrenaline of gaming (recalling *The Gambler*, from Dostoiiewski). These concerns, instead of justifying the full prohibition of gaming, only provide arguments in favour of restrictive regulatory models. Nowadays, casino gaming is considered an entertainment industry, i.e., an ordinary leisure industry and it is even argued that it should “be treated as an ordinary business”.⁹ The movie *Casino*, with Robert de Niro and Sharon Stone, provides an illustration of the evolution of the casino industry.

This appears to be the conclusion of a number of studies made by the Royal English Commission, and ended with the Gaming and Lotteries Act in 1984. But this is only the last step of a campaign of legalization and administrative regulation, whose priorities are especially the prevention of criminal exploitation and individual excess. These studies show the real situation of this kind of activity and of its market. In the English market there are large gaming and bookmaking companies that transformed their business by applying standard marketing techniques to betting. Accordingly, gaming became a “legitimate part of the leisure industry, rather than a source of social problems”¹⁰.

However, the sensitive nature of casino gaming justifies restrictive public policy approaches and regulation models. There are several actors of casino

7 Sasaki Kazuaki, *Application of Balanced Scorecard in Gaming Enterprise as Tourism Enterprise*, Conference Paper, *First Asian Academic Network Conference on Commercial Gaming*, jointly organized by the Osaka University of Commerce (Japan) and the University of Macau (PR China), in 2005 July 21 to 25.

8 See Anthony Cabot, *Casino Gaming: Casino Gaming: Policy, Economics and Regulation*, 1996, pp. 320 ff.

9 Dixon, *From Prohibition to Regulation: Bookmaking, Anti-Gambling and the Law*, Oxford, 1991.

10 Dixon, *From Prohibition to Regulation*, cit., 1991; see also A. Pereira, ‘Gaming in European Economic Law: Advertising and Betting Services in the EC’, *Boletim da Faculdade de Direito* 16 (2003), pp. 113-120.

gaming, namely: corporations that exploit casinos and their shareholders and administrators (1), Junket promoters or agents (2), players or gamblers (3), and regulators and Government bodies (4). These are the main characters of casino gaming and their role on stage is a matter of gaming law.¹¹ All gaming actors share the same common purpose: to make money - not to mention those who rob casinos as illustrated by the movie *Ocean's Eleven*. Gamblers want to make money trying their luck and placing their bets. Casino corporations want to make money by offering games. Promoters want to make money earning commissions from concessionaires for the clients they arrange. Governments want to make money allowing corporations to run casinos and paying taxes, premiums and making contributions.

Like any commercial activity (according to the Commercial Code of Macau, Art. 2(1)), this industry is about making money. However, the sensitive nature of gaming has to do not only with the purpose of making money but also with the risk that is related to it. The analogy could be drawn with the risk of banking, insurance or stock exchange, as the considerable level of risk of financial activities also justifies their sensitive nature for purposes of regulation.

Nonetheless, the hazardous nature of gaming justifies public policy approaches that favour restrictive regulatory models, as the calculation of probability of chance is not available for normal human beings and moreover gaming rules usually prohibit “counting cards” (recalling *Rain Man*, with Dustin Hoffmann and Tom Cruise), i.e. the incertitude of gaming makes it hazardous and dangerous, not only for casinos but also and mainly for gamblers, who can be in a situation of complete irrationality. On the other hand, there is a risk of jeopardising State regulations, not to mention that gambling can be associated with illegal activities, namely by serving as an instrument of money laundering, as gaming activities involve large sums of money and a risk exists that the money on the table is not accounted.

In short, the sensitive nature of gambling places several limits and restrictions to freedom of enterprise and its exercise is deemed as an exceptional privilege rather than as a right of prospective gaming operators. The sensitive nature of casino gambling is at the heart of the theory of gaming as a “privileged business”, in the sense that, as a Nevada Court ruled in 1931, the “State may regulate or suppress it without interfering with any of those inherent rights of citizenship which is the object of government to protect and secure” (*Grimes v.*

11 For example, in Macau the Role of the Gaming Inspection and Coordination Bureau is, namely, to collaborate in the definition and execution of the economic policies for the operations of casino gaming, to control casino gaming concessionaires (eligibility, financial capacity, compliance with legal and contractual obligations), and to issue licenses for junket promoters of casino gaming and to control their activities.

Board of Commissioners, 1931)¹².

§ 4. Basic Principles of Macau Casino Law

The regulation of casino games of fortunes provided by Law 16/2001 is aimed to achieve several objectives, such as, namely: that those involved in the supervision management and running of casino games are suitable persons to exercise their functions and assume those responsibilities, and that the operation of casinos is fair, honest and free of criminal influence (1); that those involved in the supervision, management and operations of casino games of fortune have appropriate qualifications to carry out their duties and functions (2); to protect the right of Macau SAR to collect gaming tax from the casino games of fortune (3); to enhance the development of tourism, social stability and economy of Macau (4).

To begin with, gaming is a legal monopoly of the Executive of Macau SAR, and the exploitation of this activity is only available to three concessionaires that comply with strict requirements concerning suitability of actors and financial capacity. In return for gaming concessions, the concessionaires pay significant premiums, taxes and contributions, and are bound to a program of relevant investments in the Region. In the operation of casinos, these concessionaires are subject to a high degree of control by the Executive within a relationship ruled by a principle of full disclosure and straight cooperation; in order to assure accomplishment of their obligations to the Region, concessionaires provide significant financial guarantees.

Then, casino junket promoters need to be licensed by the Executive of the Region and therefore they have to demonstrate adequate suitability. In conducting their activities they are subject to a high level of control not only by the Executive but also by concessionaires with which they work, for concessionaires are jointly liable for the acts of their promoters. Another relevant aspect of casino gaming law in Macau is that it does not deem as game usury casino gaming credit operations that are conducted by the concessionaires, sub-concessionaires and authorized managers and promoters.

Despite restrictive, this legal framework has introduced competition in the gaming marketplace. Casino gaming is now exploited by three concessionaires and two sub-concessionaires. Monopoly has been replaced by oligopoly, Junket promoters can work with more than one concessionaire, and moreover casino credit operations are allowed under certain circumstances. In fact, the new legal framework has introduced competition in the casino marketplace.¹³ Only

12 See Anthony Cabot, *Casino Gaming: Casino Gaming: Policy, Economics and Regulation*, 1996, pp. 320 ff.

13 See Ricardo Siu and William Eadington, *Between Law and Custom - Examining the Interaction*

a few years ago gaming services were provided by one single concessionaire in a situation of monopoly. The new legal framework has created room for three gaming concessionaires, and several sub-concessionaires are also operating. This places new concerns regarding fair competition among casino gaming operators, as well as casino consumer protection.

§ 5. The Concession of Casinos

1. Law 16/2001 provides that the exploitation of certain games of fortune is an activity that can only be exercised in Casinos by Macau SAR or by its concessionaires, up to 3, upon obtaining a gaming license from the Executive.¹⁴ 24 games of fortunes are approved as games of chance, but additional games and respective rules may be approved by the Executive.¹⁵ The Executive does also define the places of exploitation of casinos (location and premises). The term of concession is provided in the concession contract and cannot be longer than 20 years, although it can be renewed.

Three casino gaming concessions have been granted by the Executive of Macau SAR. Concessions contracts in force are with: Sociedade de Jogos de Macau (SJM), S.A. (1/4/2002 - 31/3/2020), with a sub-concession to MGM Grand Macau, S.A.; Galaxy Casino S.A. (27/6/2002 – 26/6/2022), with a sub-concession to Venetian Macau, S.A. (19/12/2002 – 26/6/2022); and Wynn Resorts (Macau), S.A. (27/6/2002 – 26/6/2022), also with sub-concession.

In order to achieve their concession contracts, these gaming companies had to follow a special procedure. There was a public tender for the award of a concession to exploit casinos, although it should be noted the special nature of this public tender, for access to which could be restricted by pre-qualification. In *Casino Gaming*, Cabot remarks that this solution corresponds to the understanding that gaming is a “privileged business”, as the Nevada Court ruled in a leading case (*State v. Rosenthal*, 1977) and consequently applicants do not have a right to a license nor even a protected expectation that justifies procedural safeguards of due process, because no prospective licensee acquires a “protected property interest” until obtaining the license (*Jacobson v. Hannifin*, 1980).

between Legislative Change and the Evolution of Macau's Casino Industry, Conference Paper, First Asian Conference, cit., 2005).

- 14 Interactive games cannot be exploited by the concessionaires of casinos and their exploitation is not related to the exploitation of casinos. It does not mean that the interactive gaming business, namely Internet Gambling, can freely be conducted, as any commercial gaming activity requires public authorisation.
- 15 Despite their soft legal value, these rules represent “hard law” of gaming as they account for much of the fairness of the game, as evidenced by the Conference Paper of Jason Zhicheng Gao, *Fairness of Macau Casino Games*, Conference Paper, First Asian Conference, cit., 2005.



2. Moreover, in order to qualify to the concessions, casino concessionaires had to comply with several requirements. These grant a high level of control of the Executive over the concessionaires. Qualifying requirements for eligible applicants are, namely:

a) These companies have to be public companies incorporated in Macau (see Commercial Code, Art. 174(1), providing several types of commercial companies, namely: unlimited partnerships, limited partnerships, private companies and public companies; for requirements of the incorporation act see Commercial Code, Art 179);

b) There are suitability requirements (experience and financial capacity, e.g.) of the applicant and of substantial equity holders (5% shareholders) and key employees and directors;

c) The exclusive object of these companies is to exploit casino games of fortune;

d) Minimum capital must be MOP 200 millions, which must be fully accomplished in money by deposit in a credit institution legally operating in the Region;

e) Corporate capital must be fully represented by nominative shares (not shares to bearer);

f) The executive manager (delegate administrator) must be a Macau resident who owns at least 10% of the capital and he is subject to approval by the Executive;

g) Concessionaires must offer adequate financial guarantees of payment of premiums and taxes, and accept to provide special contributions.

3. The operation of casino gaming by concessionaires is subject to several rules that provide great control powers to the Executive. These are, in special:

a) Transfers of company shares and voting or other rights are subject to authorization from the Executive (the same goes for the increase of corporate capital by public subscription, the emission of privileged shares and bonds and the admission to listing on the stock exchange of the concessionaire or a dominant shareholder thereof);

b) Transfer by any means or sub-concession, total or partial, of the exploitation of casino games of fortune requires previous authorization from the Executive (in the SJM concession contracts, penalties range from 1 billion MOP in case of unauthorized transfer of full exploitation to 300 million MOP in case of unauthorized sub-concession of partial exploitation);

c) Agreements outside the company among shareholders have to be searched for by the concessionaire and must be communicated to the Executive (Art. 185 of the Commercial Code provides several limits to these agreements);



- d) Concessionaires have to comply with corporate rules on legal reserves (at least $\frac{1}{4}$ of 200 million MOP);
- e) Concessionaires have to install in casinos and other gaming areas electronic surveillance devices approved by the Gaming Inspection and Coordination Bureau;
- f) Concessionaires must pay premiums and taxes, and to offer adequate guarantees of payment;
- g) Concessionaires are bound to provide contributions to the development of Macau as established in the concession contract;
- h) Concessionaires must keep casinos running continuously and to advertise and promote casinos;
- i) Concessionaires have to comply with public regulations and intellectual property rights, such as patents, marks, and copyright;
- j) When the gaming concession expires, all assets and cash deposits revert to the Macau SAR.

§6. Casino Duties: Premiums, Taxes, Contributions, and Investments

Casino Concessionaires have to pay a premium of concession which is composed of a fixed portion paid yearly plus a variable portion paid monthly. For example, the concession contract of SJM provides a yearly premium of 30 million MOP, and as variable portion at least yearly 30 million MOP for special gaming tables, 15 million MOP for free gaming tables and 1 thousand MOP for each slot machine. Moreover, casino concessionaires have to pay a *special gaming tax* of 35% of gross revenue (Law 16/2001, art. 27), and assigned contributions of 1.6% of gross revenue to the Macau Foundation, and 1.4% to 2.4% of gross revenue to Infrastructures, Tourism and Social Security Fund.

On the other hand, concerning investments in Macau SAR, the concession contracts in force provide around 4.7 billion MOP for *SJM*, 8.8 billion MOP for *Galaxy/Venetian*, and 4 billion MOP for *Wynn*. It means that only in investments Macau SAR will receive approximately MOP 17.5 billion from concessionaires. In carrying out these investments, concessionaires are bound by several duties, namely to use materials and systems that comply with international quality standards.

§ 7. Casino Transparency: Full Disclosure

In order to fulfil their obligations to the Region, concessionaires are subject to a rule of full disclosure. This is evidenced by several obligations of information and cooperation, special gaming accounting rules and investigative procedures, as well as to submission to daily supervision of gaming revenues.

Each year the concessionaire must provide the Executive the *structure*



of *shareholders* that own 5% or more of the capital, including the membership structure of companies that hold such shares in the capital of the concessionaire. Moreover, the concessionaire must inform the Executive about any person that is designated to the corporate bodies of the concessionaire (general assembly, board of administration, supervision council and any other corporate body). Concerning agreements outside the company (or would-be agreements), they have to be searched for by the concessionaire who must communicate them to the Executive. Then, casino enterprises are run by an executive manager approved by the Executive and the concessionaire cannot grant powers of attorney to any other persons concerning the exercise of the enterprise in the name of the concessionaire.

As for *obligations of information*, concessionaires must inform the Executive about any circumstances that may affect their operation (concerning namely their solvency), any remunerations paid to administrators, financiers and main employees, forms of profit distribution, as well as any management and service contracts; concessionaires also have to provide the Executive with a list of gaming promoters they want to work with in the following year. This allows Public Authorities to control who is taking money from the casino and why. In order to carry out the obligation of information, concessionaires have to submit each year to the Gaming Bureau a document with all their banking accounts.

Concerning *accounting*, concessionaires have to keep proper accounting books according to the Official Accounting Plan of the Region. In special, concessionaires are bound to provide to certain Public Authorities, namely the Gaming Inspection and Coordination Bureau, free access to any parts of their premises as well as free access to and examination of bookkeeping and accounting, including all relevant documents. Moreover, concessionaires are subject to external auditing by internationally recognized auditing firms, and must allow extraordinary auditing.

In order to provide *public disclosure* of their activities, casino concessionaires also have to publish in the Official Bulletin of Macau several elements, such as balance sheets, report of gains and losses, activity report summary, opinion of the supervision board and summary of opinion of external auditors, list of qualified shareholders having 5% or more of the capital in any period of the year, and names of holders of positions in corporate bodies.

§ 8. Financial Provisions and Guarantees

In order to be eligible for running casino gaming, companies need to comply with strict financial requirements. To begin with, they must have a minimum corporate *capital* of 200 million MOP fully accomplished in money deposited in a credit institution legally operating in Macau. Moreover, concessionaires must comply with corporate rules on mandatory reserves. It means that until they reach



an amount equal to a $\frac{1}{4}$ of the capital (minimum 200 million MOP), no less than 10% of exercise profits have to be retained as legal reserves (Commercial Code, art. 432, 2). Then, concessionaires have to communicate to the Executive any loan they grant higher than 30 million MOP or equivalent contract, and they must achieve required financing for proper operation.

Another financial aspect concerns *insurance*. In fact, casino concessionaires have to take several insurance contracts that cover the risks of operation of their activities in the Region. These insurance contracts include, namely, labour accidents and illness, transports (cars, boats, planes), advertising, specific insurance for gaming, insurance of premises, equipment and other goods used in the exploitation of casinos.

There are *financial guarantees* to be provided by casino gaming concessionaires. First, concessionaires have to provide guarantee of accomplishment of their legal or contractual obligations to the Executive. In special, they are bound to keep in favour of the Executive an *independent banking guarantee on first demand* (see Commercial Code, Arts. 942 ff). For example, SJM has to keep in favour of the Executive an independent banking guarantee on first demand the amount of which is 700 million MOP until March 2007 and 300 million MOP thereafter. Moreover, concessionaires have to provide a specific banking guarantee of payment of the *special gaming tax*, which is also an independent banking guarantee on first demand. The Executive can also demand the *dominant shareholder* or other shareholders of the concessionaire to provide a guarantee concerning the obligations of the concessionaire, which can be provided for example by deposit in money, banking guarantee or insurance-bail. These are instruments to reinforce the accomplishment of the obligations by the concessionaires, as the Executive can use these guarantees independently of court decision whenever the concessionaire does not fulfil any of its legal or contractual obligations (e.g. do not pay in time concession premiums or the special gaming tax).

§ 9. Casino Junket Promoter

Administrative Regulation No 6/2002, amended by Administrative Regulation No 27/2009, provides the regulation of access and exercise of the activity of (Junket) *promoters of casino games of fortunes*. Gaming promoters are important actors. They promote casino games of fortunes to potential gamblers, by providing facilities, including transportation, hosting, food and entertainment, in exchange for a commission or other remuneration to be paid by the casino concessionaire.

In order to be eligible for the exercise of this activity, promoters have to be commercial entrepreneurs or companies and comply with certain requirements. In



case of commercial companies, their object can be only the promotion of games of fortune and their capital can be owned by human persons only. In case they are public companies, their shares have to be nominative and their capital must be fully accomplished at the moment of the act of incorporation of the company. Registration of gaming promotion companies and entrepreneurs is dependent upon previous obtaining of the gaming promoter license.

The Executive grants a license of gaming promoter through the Gaming Inspection and Coordination Bureau. Applicants must demonstrate suitability for this activity submitting special application forms. In order to appraise the suitability of applicants the Executive has access to all their documents and information as deemed necessary, and applicants have a special duty of cooperation. The Executive can also demand a risk evaluation report. In case the suitability of the applicant is positive, he can be granted a license of promoter of games of fortune for one year renewable upon request.

In the exercise of their activity, licensed gaming promoters can choose collaborators and must communicate to the Gaming Bureau their identities for approval. Gaming promoters have to be registered by a gaming concessionaire, upon approval of the Executive. Unless otherwise stipulated, their activity is not exercised in conditions of exclusivity, as they can act with more than one concessionaire.

Gaming promoters are also subject to full disclosure and to strict control by public authorities. In fact, they have to communicate any change of corporate structure to the Gaming Bureau and agreements outside the company also have to be searched for by the concessionaire and communicated to the Executive. Moreover, transfers of company shares and voting or other rights are subject to authorization from the Executive. On the other hand, the promoter cannot exercise the activity through another person and cannot transfer by any means his contract with the concessionaire.

Promoters exercise their activity with the concessionaires according to the contract concluded by them and which seems an agency contract (Commercial Code, Art. 581). This is of special importance, as concessionaires are jointly liable with promoters for the activity of promotion they conduct in their casinos. Moreover, concessionaires have an obligation to control gaming promoters and to communicate to the authorities any fact that may indicate the criminal offences by gaming promoters, such as money laundering. The same goes for gaming promoters, as they are jointly liable for the activity conducted by their employees and collaborators in the casino.

Administrative Regulation No 27/2009 empowered the Secretary of Economy and Finances to fix a maximum limit for commissions and other remunerations to be paid by concessionaires to junket promoters, as well as the

obligation to disclose it. Order 83/2009 of the Secretary of Economy and Finances fixed it in 1.25% of the net rolling regardless of the basis of calculation.

§ 10. Casino Gaming Credit Operations

Law 5/2004 provides the regulation of *casino gaming credit operations*. In short, there is a casino credit operation where a gambler or a promoter receives casino chips without immediate payment in money. Only concessionaires, sub-concessionaires and authorized in writing managers and promoters are allowed to grant credit for casino gaming. Casino credit granters have to provide all solicited information to Public Authorities, and their workers are bound by confidentiality.

As provided in the regulation of casino gaming credit operations, this activity is not considered gaming usury, i.e. lawful casino gaming credit operators are not deemed extortionate money-lenders, as provided in Law 8/96/M, of July 22, on gaming crimes (Art. 13). Nonetheless, perhaps some criterion limitation of interest rates should apply, not to mention that gaming credit operations are subject to the general regulation of legal transactions and the specific rules of such operations provided by the Civil Code (Art. 1171°).

§ 11. Final Remarks

Gaming is a sensitive activity from the viewpoint of consumer protection, as gaming consumers can easily lose rational control. Therefore, commercial gaming, especially casino gambling, is prohibited in several jurisdictions, or it is submitted to restrictive regulatory models that are based upon the understanding of gaming as a “privileged business”, even within a context of evolution of the gaming industry from a marginal activity to a business of leisure and entertainment. Nowadays, consumer protection becomes a major concern of the regulatory framework.

This paper overviewed the regulatory framework of casino games of fortune in Macau. Gaming remains a legal monopoly of the Executive of Macau SAR, and the exploitation of this activity is only available to three concessionaires that comply with strict requirements concerning suitability of actors and financial capacity, and pay significant premiums, taxes and contributions, and are bound to a program of relevant investments in the Region, submitting to a high degree of public control and providing significant financial guarantees of accomplishment of their obligations, not to mention compliance with anti-money laundering regulations. The new legal framework of Macau has introduced competition in the gaming market, at least in the sense of oligopoly. Moreover, it has “liberalised” the activity junket promoters, however with some restraints, and exempted from game usury casino credit operations under certain circumstances.

Consumers can benefit from the new regulatory framework, as competition



is capable of promoting consumer welfare. But the sensitive nature of casino gambling, from the viewpoint of consumer protection, could justify a more protective legal environment. Such an enhanced legal environment of casino consumer protection, namely in what concerns interest rates of casino credit operations and gaming fairness, would certainly favour consumer confidence and improve the gaming market.

