

Asian Gaming Lawyer

LEGAL DEVELOPMENTS IN ASIA PACIFIC

May 2017

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► PRESIDENT'S MESSAGE

IMGL adds Clarion Events Masterclasses to action-packed calendar



Mike A. Zatezalo
IMGL President

IMGL started the New Year where it left off in 2016 by offering its Masterclass at the National Council of Legislators from Gaming States (“NCLGS”) at the NCLGS winter meeting in Scottsdale, Arizona, on January 6-8th, 2017. The IMGL Masterclass included panels on the role of Regulators, Tribal Gaming Legal Issues with States, and eSports and were well received.

On February 3, 2017, IMGL and the law firm of Kalf Kalf Katz & Franssen hosted a pre-ICE gathering of gaming officials and industry representatives at the Industriele Groote Club in Amsterdam, Holland. Over 150 guests attended this invitation only gathering. Justin Franssen, IMGL Assistant Secretary and General Member from Holland, was the host and did a fantastic job. Featured speakers were Erwin van Lambaart, CEO of Holland Casino, Peter-Paul de Goeg, Managing Director of Lottomate and Marja Appelman, head of the Holland Casino Commission. It was a very informative meeting and great networking event.

Then it was on to London for the Annual ICE conference (February 7-9) in London, England, at the ExCel center. IMGL once again held a Masterclass at ICE which was very well attended with 221 attendees (extra chairs needed to be brought into the conference room!) and included panels on worldwide developments, anti-money laundering and the effect that Brexit and the election of Donald Trump would have on the gaming industry. IMGL also had its annual ICE reception at Merchant Taylors' Hall in London and experienced the largest crowd ever to attend the reception. Our thanks to member Tony Coles and

his firm Gordon Dadds for co-hosting the reception. It was not only a great location but a fascinating historical venue.

However, perhaps the biggest news of the new year is IMGL's entering into a Memorandum of Understanding with Clarion Events Limited which gives IMGL the option to conduct Masterclasses at all Clarion events. We are very excited about this partnership and the opportunity to extend the reach of the IMGL brand. If any of our members are interested in participating or organizing any of these Masterclasses, please contact Joerg Hoffman, our past President, who is coordinating our Masterclasses and our Executive Director, Sue McNabb. We have posted on the IMGL website a list of the confirmed future IMGL Masterclasses for 2017, as well as the Clarion events where IMGL will have the option of conducting a Masterclass.

The IMGL spring conference will be held in Miami, Florida, this year and takes place on May 10-12th, 2017, at the Turnberry Isle. If you have not made your reservations to attend, I would suggest you do so now. It should be another great conference and offers a side trip to the Gulfstream racetrack on Saturday, May 13th, with a private suite at the finish line for IMGL guests to enjoy the day. I encourage everyone to make plans to stay in Miami over the weekend and enjoy the Day at the Races. Finally, our fall conference will be held in Copenhagen, Denmark, September 10-12th, 2017. Please mark your calendars accordingly. As you can tell, 2017 will be a very busy and exciting year for IMGL. I look forward to seeing many of you in Miami.



▶ EDITOR'S LETTER



Yap Wai Ming

Partner
Morgan Lewis Stamford



Jorge Godinho

Visiting Professor
University of Macau

Spectre of protectionism looms

Dear Readers

If the United States Presidential election and Brexit are anything to go by, we are seeing a sea of political change sweeping across America and Europe. We are also witnessing the French election where hardliners are campaigning to follow Britain's footsteps in leaving the European Union. Scotland is signalling that it wants a referendum to leave Great Britain and hopes to join the EU after that. The political map of Europe will no doubt shift along the lines of protectionism with some countries seeking to better control their own borders than be part of a larger union.

How is all this relevant to the casino industry in Asia? If countries focus on protectionism, it may invite reciprocal treatment from others. Other unintended consequences may also flow. Asians gamblers are known to travel far and afield to gamble. China restricted its citizens from visiting the casino enclave in Macau, ostensibly to curb corruption, and that has caused a huge decline in casino revenues in Asian cities that rely on Chinese patrons. Prof. Nelson Rose has written an interesting piece on how China will impact Las Vegas in this issue.

In addition, we are examining some interesting aspects of the Macau casino scene such as the renewals of the casino concessions, its smoking policy and VIP junket operations. The demonetization policy of India which has also impacted India's gaming industry will also be a focus here, together with the potential opening of the Japanese integrated resort promotion laws.

We hope you will enjoy this issue and we welcome any comments!



IMGL wishes to thank the spring conference co-chairs, committee members, the moderators and the panelists for the contribution of their time and efforts in putting together the excellent educational opportunities IMGL is proud to provide at the Spring 2017 conference.

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Risk Assessment and Compliance



João
Kruss
Gomes*

Risk assessment in casinos is a process and measures to be implemented related to risks that may affect the casino operation.

In fact each different field of business has its own specific risks that may affect the business operation and profitability. If we consider a company that sells health products, or insurance companies, banking and so on, the risks to be taken into consideration are different in nature and a risk management implementation is needed in order that companies in general may minimize their exposure to such potential risks and be in compliance with rules and regulations applicable to a particular business field.

The main challenge when implementing and development a risk assessment will be first to identify the potential risks involved that may affect the company's business and we may refer to risks in general, such as market competition (internal and external), economic growth, concession contracts, money laundering, casino reputation, intellectual property, litigation and regulatory non-compliance, fraud, theft, operational difficulties, labor and others.

Basically in risk assessment management we have to:

- identify and understand specific risks that may affect the gaming industry (casinos);
- identify the personnel involved;
- assess the means of mitigation of such risks.

In general terms one of the most important risks facing casinos involves money laundering, to which they are vulnerable.

Gaming concessionaires must detect and prevent money laundering in compliance with laws, regulations and instructions from authorities related to money laundering by ongoing monitoring of patrons, financial transactions, due diligence, reporting and analyses. (This can be a challenge bearing in mind that there are decentralized transactions, various cashiers in different areas of casinos, different pits and an internal high volume of AML reports to be done).

In risk assessment management, there's a constant need to analyze all laws and regulations applicable to the gaming industry. Laws may change from time to time and new laws, rules and instructions will be applicable to the industry and may alter the gaming business environment, meaning there's a need to adopt proper and updated internal casino policies and procedures in order to analyze the trends of the legal environment in Macau and implement on time the appropriate measures to mitigate risks involved and comply with new laws, regulations and instructions that may be applicable from time to time to the gaming industry.

In complying with all regulations to avoid penalties, most important is an ongoing training program for better risk management and ensuring that all company employees understand the casino's obligations.

In order to monitor and detect suspicious activities inside the casinos, proper surveillance is needed and casinos need to comply with specific surveillance regulations, not only as stated at the concession contracts but also from regulators' instructions from time to time.

One of the latest legal challenges involving the gaming industry in Macau was the smoking issue, where new laws, administrative rules and instructions were implemented. Concessionaires needed to adapt and comply accordingly with the requisites stated in all applicable legal diplomas.

Also, a law was implemented last year related to Finance and Terrorism Prevention. The "Assets Freeze Regime," or law number 6/2016 entered into force on 29/8/2016 and is where the Macau SAR fulfills its international obligations brought by the United Nations Convention against terrorism and proliferation of arms of massive destruction.

Finally and in conclusion we may say that nowadays risk assessment and compliance are of key importance in organizations. Through risk assessment analyses and compliance, the gaming concessionaires can forecast and understand the potential risks affecting the gaming industry that may have an impact on the organization. As a result, they can implement proper measures, on time, in order to minimize the effects.

Through the new laws, rules and instructions (anti money laundering and terrorism financing, freezing of assets, gaming promoters, credit for gaming, entry and work in casinos, slot machines requirements, smoking, responsible gaming and so on) Macau has become a better regulated gaming industry jurisdiction and proper risk assessment and compliance is needed from gaming concessionaires not only to comply with all respective applicable laws and regulations, but also to face future challenges in Macau's gaming industry.

*About the author

João Kruss Gomes is a registered lawyer in Macau and Portugal and a Macau resident since 1989. For the past years he has been working in the Macau Government, insurance and the gaming industry for around 10 years. He is the author of the leasing contract published in the University of Macau bulletin.





Macau Gaming Concessions: A brief insight into their term and renewal

It is widely known that the economy of the Macau Special Administrative Region (“Macau” or “MSAR”) relies heavily on its gaming industry. But few know how much. The 2015 casino gross gaming revenue (GGR) of 230.84 billion patacas (US\$28.9 billion), which is slightly above Latvia’s 2015 gross domestic product, generated close to 77 percent of Macau’s total fiscal revenue.



**Bruno
Beato
Ascensão***

Historically, the gaming industry has long been a central part of Macau’s economy and increasingly so since its handover to the People’s Republic of China in 1999 and subsequent transition from a monopoly based system to a liberalized gaming industry. But few predicted, back in the early noughties, the heights that the gaming industry would reach. For those who managed to take part in this formidable boom, life has been good. However, there are those who have been sitting on the sidelines waiting patiently for a piece of the pie. The term of the Macau gaming concessions may be their way-in.

Macau’s gaming industry is almost exclusively dominated by the operation of games of fortune or chance, or other casino games whose legal framework is regulated by Law 16/2001 (the “Gaming Law” or “GL”). The Gaming Law stipulates that the operation of games of fortune or chance is restricted to public limited liability companies incorporated in Macau which have been granted a concession by way of an administrative contract by the MSAR (“Concession”) (Cf. article 7.1 of the Gaming Law). The maximum number of Concessions is limited to three and are subject to a public tender before being granted (Cf. articles 7.2 and 8.1 GL).

Further to a public tender whose results were made public by Order of the Chief Executive no. 26/2002, dated February 8, 2002, three Concessions were provisionally awarded to “Sociedade de Jogos de Macau, S.A.” (“SJM”), “Galaxy Casino, S.A.” (“Galaxy”) and “Wynn Resorts (Macau,

S.A.” (“Wynn”). SJM signed its contract on March 28, whilst Wynn and Galaxy executed their contracts on June 24 and 26, 2002, respectively.

On December 19, 2002, Galaxy signed a revised Concession contract with the MSAR Government (“Government”), as well as a sub-concession agreement (“Sub-Concession”) with “Venetian Macau, S.A.” (“Venetian”) which enabled the latter to operate games of fortune or chance or other casino games in the MSAR. Two additional Sub-Concessions with the same scope ensued between (1) SJM and “MGM Grand Paradise, S.A.” (“MGM”), signed on April 20, 2005, and (2) Wynn and “Melco PBL Jogos (Macau), S.A.” (“Melco PBL”), signed on September 8, 2006.

In accordance with article 13.1 of the Gaming Law, Concessions are subject to a term set in each agreement which cannot exceed 20 years. Gaming Concessions which have reached the 20-years term can only be exceptionally extended, once or more, by way of a reasoned order issued by the Chief Executive, to a maximum period of five years (Cf. article 13.3 GL). Once the said five years’ extension has elapsed, the Concession is terminated. Unless the Gaming Law is amended, future Concessions will be subject to a public tender procedure.

The SJM Concession stipulates a term of 18 years, ending on March 31, 2020, whilst the Galaxy and Wynn Concessions have a 20-year term, terminating on June 26, 2022.

The Sub-Concessions end on the same day from which

each formally derive. Thus, the term of the MGM, Venetian and Melco PBL Sub-Concessions is March 31, 2020 for the first, and June 26, 2022 for the last two.

The legal nature of the Sub-Concessions has caused much debate and controversy. Some say that these agreements are illegal in light of the current Gaming Law, although their legality has not yet been challenged in the MSAR jurisdiction.

A Portuguese Administrative Law academic defines sub-concessions as “[...] the transfer that the concessionaire, with the conceding party’s consent, does to another company of part of the obligations conceded and of the powers necessary to fulfil such obligations, in accordance with the terms agreed between the concessionaire and the sub-concessionaire.” (Cf. Marcelo Caetano, Administrative Law, vol. II, Lisbon, p. 1127-1128). These agreements, such as any concession contracts granted by the Government, are deemed administrative agreements, therefore regulated by Administrative Law.

As mentioned above, the first Sub-Concession was entered between Galaxy and Venetian on December 19, 2002. When Galaxy’s initial Concession was signed by public deed, on June 26, 2002, Clause 24 of the said agreement stipulated that the concessionaire would undertake to transfer to a Venetian group company, designated “Venetian Macau – Management Company, S.A.” the management of the Concessionaire, regarding the operation of casinos games of chance.

However, a subsequent fall-out between Galaxy and Venetian, allegedly due to the joint-venture not satisfying the Nevada gaming regulator’s standards, led the Government to authorize a Sub-Concession agreement to satisfy both parties’ interests.

According to the second paragraph of its recitals, the Venetian’s Sub-Concession stems from Clause 75.1 of Galaxy’s Concession. In accordance with said clause, sub-concessions are forbidden unless approved otherwise by the Government. The formal approval, if any, was never disclosed by the Government.

As the first ever Sub-Concession, Venetian’s terms will be briefly analysed in order to determine how different it is compared to the Concession it derives from:

a) The Venetian Sub-Concession has the exact same scope as the Galaxy Concession, i.e., the operation of games of fortune or chance or other casino games in the MSAR (Clause 1.1);

b) In Clause 6.2, Venetian committed before the Government to the fulfilment of legal obligations identical to those of the concessionaires;

c) Venetian is authorized to operate all kinds of games that the concessionaire has been authorized to operate, as well as any electrical or mechanical gaming machines (Clause 10.1);

d) The Sub-Concession is governed by the same legal framework applicable to the Galaxy Concession and Venetian assumes before the Government the fulfilment of legal obligations identical to the ones assumed by Galaxy (Clause 6.1 and 6.2);

e) The concessionaire does not assume nor share any liability before the MSAR for any damages caused by the non-performance of part, or all of the sub-concessionaire’s legal or contractual obligations caused by the latter (Clause 74.1);



f) The termination of Galaxy’s Concession before June 26, 2022 does not imply the termination of Venetian’s Sub-Concession (Clause 94.1);

g) In case of termination of the Concession, the Government will do its best in order to transfer Galaxy’s contractual position as concessionaire in the Sub-Concession to be assumed by another concessionaire for the operation of games of fortune or chance and other casino games (Clause 94.2)

h) The Government will extend to Venetian any more favourable conditions granted in future Concessions (Clause 106).

It should also be noted that some of the obligations assumed by Venetian could not have been imposed by Galaxy, but only by the Government, e.g., those related to the payment of taxes, contributions and other commitments made and mentioned in Clauses 6.2, 47.1, 48, 49 and 74.1 which bind the sub-concessionaire directly to the Government, evidently making it a (silent) party of the Sub-Concession.

As a result of the above-mentioned, there seems to be no substantial difference between the Galaxy Concession and the Venetian Sub-Concession other than its formal designation. The same could be said of the other Sub-Concessions.

Considering that the current Gaming Law forbids more



than three Concessions, how is the Government going to address the continuity of the existing Concessions and Sub-Concessions at the term of each agreement?

One option on the table is to amend the Gaming Law in order to reflect the current status quo in the MSAR gaming industry. This amendment entails specifically admitting the admissibility of Sub-Concessions, along with the respective terms and conditions.

Since the current Sub-Concessions are in substance Concessions, all new Sub-Concessions granted should abide by the legal nature of such contracts. This would avoid the Government having to issue letters to third parties declaring the independence of these Sub-Concessions in relation to their respective Concessions.

Considering that the current MSAR gaming industry has come a long way since the Gaming Law was first enacted, the Government may also address the possibility of setting shorter terms for new Concessions and allowing the renewal of current Concessions by direct award instead of public tender. However, any amendment to the gaming regulatory framework will have to pass through the Legislative Assembly, which may not be an easy hurdle to overcome.

On the other hand, no one can guarantee that the Government will allow new Sub-Concessions once these terminate, nor should the number of six gaming operators be taken for granted.

In any case, the Government will most certainly ensure that the renegotiation of the current Concessions and/or Sub-Concessions is done simultaneously, i.e., by extending SJM's Concession, and MGM's Sub-Concession, in order for both to end at the same time as the remaining Concessions and Sub-Concessions, i.e., in 2022.

There is also the possibility of the Government extending the Concessions (and Sub-Concessions) with an additional term of up to 5 years, i.e., until 2027.

The renegotiation of these contracts will likely fall upon the next Chief Executive whose term will start on December 21, 2019.

One thing is certain: the future Government's handling of the negotiation regarding the award of future Concessions will abide to the directives set by the Central Government and will reflect the political zeitgeist of this decade's end and early twenties.

***About the author**

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What future for Macau's sub-concessions?

In memoriam (Rui Afonso, 1947-2017)

Macao gaming systems are the result of historical evolution from the 19th century onwards, which were legally established and made available for commercial purposes through administrative concessions granted by the Macao SAR Government (Godinho, 2016: 239)¹.



Sérgio de Almeida Correia*

1. Historical view

Formally, the legal gaming industry dates from 1810, when the Holy House of Mercy of Macao began to operate lotteries. For more than two centuries gambling has contributed to the economic development of Macao. It is therefore natural that its importance is recognized by the very attention given by its administrators to gaming affairs. There has been news of the existence of concession rights related to lotteries and the so-called games of fortune and chance since the days of Governor Ferreira do Amaral (1846-1849) (Godinho, 2016: 149).

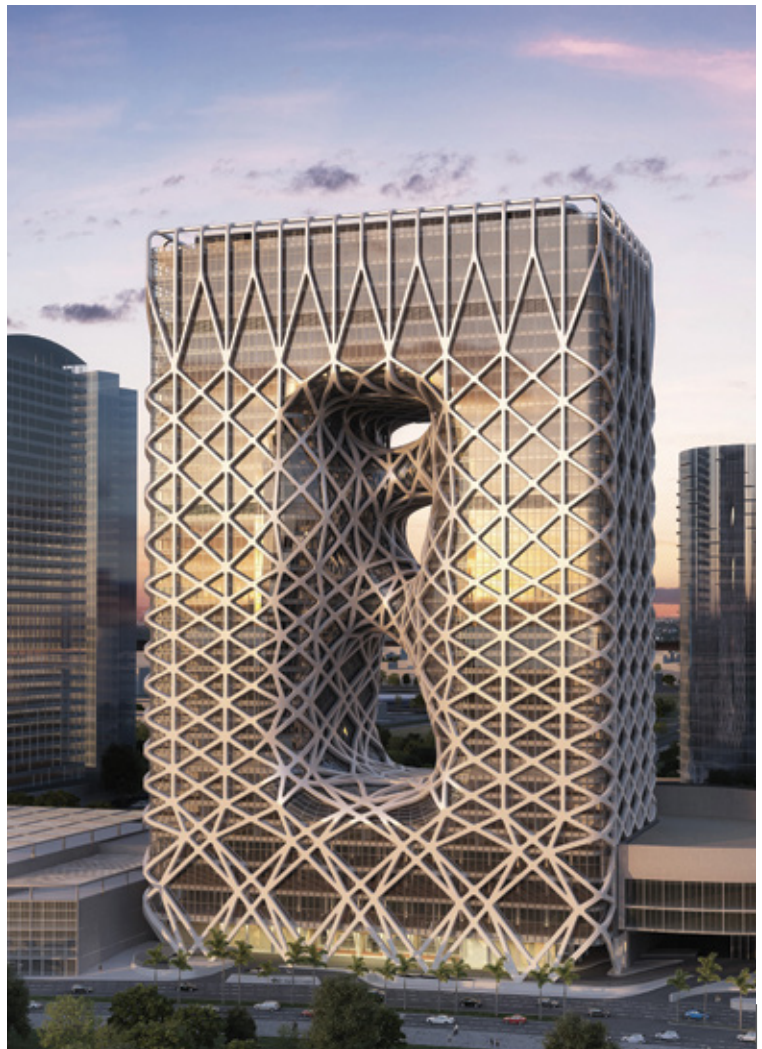
The current legal framework finds its roots in the legislative bill n^o 1496, of June 1961, and from 1962 onwards it has been based on a concession system that, apart from the traditional more inward-looking models, sought to establish its gravitas and potential in the tourism industry. This model comes with greater specialization and more exhaustive regulation, taking into account the diversity of the gaming sector applications. Also, this development is associated with a growing professionalization of the sector evolving into a large-scale business aspiring to have international elements, as well as the establishment of entities specialized in this trade with competencies exclusively related to matters of gaming.

With the introduction of this new regime, Stanley Ho's STDM was granted a market monopoly to operate gambling, which continued uninterrupted until the beginning of this century following the handover of the Macao Administration from Portugal to the PR China (PRC) with the consequent establishment of the MSAR. It was then decided to liberalize the gaming industry.

The liberalization of the sector was already advocated by the Legislative Assembly (LA), for it was expressly included in article 5 of Law no. 6/82/M, of May 29, when a special license regime of up to four concessions was envisaged². However, the lack of strategic vision of the Portuguese Administration - personified in the last governor of Macao³ postponed the liberalization of the gaming industry to the 21st century. For this reason, the liberalization would only come

about in the early 2000's, under a Chinese administration through the enforcement of the Law no. 16/2001. The current public tendering system for the casino gaming licenses was established containing the requirements to which the concessionaires were to comply.

These days, the MSAR enjoys legislative autonomy in defining casino gaming policy. This is included under the heading of "tourism and entertainment industry", which is



1. Godinho, Jorge A. F. (2016), *Direito do Jogo*, Vol. I, Macau.

2. Subsequently, Law No. 10/86/M, of Sept. 22, would limit the maximum number of concessions to three.

3. In December 1985, an official publication of the Government of Macao stated that "competition in the field of gambling should prevail over exclusive competition and this rule should only be disregarded in order to maintain the socially harmful effects of gambling (mainly those related to criminality) within reasonable limits (...) or when the size of the market does not justify the existence of more than one operator"- cf. The Game in Macau, Gaming Bureau, December, 1985.

dealt with in Article 118 of the Basic Law, and should accord with local interests and also integrated with the interests of the PRC itself.

2. The concession legal tool

In accordance with customary practice, activities related to the casino gaming industry post-1999 Macau were bound by the legal-administrative institution of the concession. The concession is a juridical entity deeply rooted in Portuguese administrative law, which inspired the Macau law. The administrative concession contract for the operation of games of fortune and chance is defined as “the administrative contract by which the administration allows a private person to operate, or maintain and operate, a casino gaming premise by remunerating himself from gaming revenues and providing financial compensation to the grantor” (Sousa and Matos, 2009: 78)⁴.

Pursuant to article 165 of the Macao Administrative Procedure Code (CPAM), the concession of the casino gaming operations is made under an administrative contract negotiated between the grantor, the Macau SAR, and the concessionaire. Law 16/2001 is the instrument that contains the fundamental collection of rules applicable to casinos in the MSAR. Paragraph 2 of article 1 stipulates that the legal regime aims, in particular, to ensure: (i)

proper exploitation and operation; (ii) the suitability of those involved in oversight, management and operation; (iii) operation under conditions of justice and honesty, and free from criminal influence; (iv) protection of the MSAR’s tax interests and, at the same time, (v) promoting tourism, social stability and economic development.

However, unique to the Macau system is the fact that by law there are only three maximum allowable concessions (see article 7, Law 16/2001). Despite this, the direct operation of casino gaming is undertaken by six distinct entities. Three of these are without concession agreements with the MSAR, operating under sub-concessions but behaving as if they were true license holders.

The legal regime for the concessions derives from the general law - Law 3/90/M, of May 14 – which defines the general basis of concessions for public works and public services by virtue of article 26. It applies to concessions that are not regulated by specific legislation. Sub-concessions are meant for public works and services. So, in view of the provisions of article 165 of the CPAM, there would be no legal basis for sub-concessions in games of chance, i.e. casino gaming.

The reason of delving here into the issue of gambling concessions derives from the above-mentioned restriction of the law as well as from the fact that the current concessions will end between 2020 and 2022. In the case of SJM, the current contract expires on March 31, 2020. The other two concessionaires, Galaxy Casino and Wynn Resorts (Macau) both have their contracts expiring on June 26, 2022. Consequently, the sub-concessions will expire on March 31, 2020 (MGM) and on June 26, 2022 (Melco Crown (Macau) and Venetian).

4. Sousa, Marcelo Rebelo and Matos, André Salgado (2009), *Contratos Públicos, Direito Administrativo Geral*, Tomo III, D. Quixote, 2.^a edição.



3. Problems to be solved

Sub-concessions raise three fundamental problems. One derives from the particular contractual instrument used that allows for the extension of certain obligations beyond the date of termination of the concession contracts on which they depend. This is contrary to what is common practice and is not a result of the classic administrative legal framework applicable to sub-concessions. To clarify, clause 94 of the sub-concession contracts states that the termination of the concessions does not imply the termination of the sub-concessions.

This is a genuine legal aberration, which is understandable given the circumstances at the time (2002-2006). The continuity clauses for sub-concessions beyond the final deadlines set in the gaming concession regime is no longer acceptable. It should be corrected as soon as possible so that this situation does not recur. Essentially, it is a technical-legal problem that, if corrected, would not expose any major risk to the interests of the MSAR.

A different and much more acute problem arises from the answer to the question of whether the current regime of sub-concessions is in the interests of the MSAR.

On this subject, it seems that the answer is unequivocally negative. The current regime of sub-concessions is clearly detrimental to Macao's interests because the proceeds from the agreement to establish the sub-concession, which should go directly into the MSAR treasury strongboxes, will eventually end up in the pockets of brokers and intermediaries who use the licenses granted by MSAR to negotiate the terms of the sub-concessions. In other words, the grantor,

who is the MSAR Government, is marginalized from these negotiations and takes no advantage from the income generated by an agreement prior to the commencement of casino operations of the sub-concession; and which terms it does not control⁵.

The existing system seriously penalizes the interests of the MSAR, and by the same token the PRC's. It lacks transparency and therefore is also contrary to the financial interests of Macao and of the requirements of greater transparency and accountability in public affairs.

The third question to which the MSAR Government will have to determine a response is whether or not the continuation of the existing concessionaires and sub-concessionaires should be maintained, and whether or not their numbers should increase. To this point it should be remembered that gaming is a "public service" in Macao (Godinho, 2014: 3)⁶ and any change implies a revision of Law 16/2001⁷. This issue will have to be defined with these guidelines in mind some time in advance because the future will depend on it. For now, what can be said is that there is no advantage from sub-concessions to the MSAR. And it is not justifiable to have sub-concessionaires, as well as junkets, behaving as if they were the license holders into the future.

4. Conclusion

In conclusion, it will be said that it is important to realign the bizarre de facto reality of the present day sub-concessions with the legal logic of the Macau law and in the interests of the MSAR, by not allowing the continuation of sub-concessions beyond the current deadlines. It is therefore appropriate to plan for the future and to review the existing legal regime, if necessary by extending the span of concessions to allow direct allocation. It is important to put an end to the present sub-concession system, which creates conflicts of interest and other corrupt practices. This solution is balanced, it respects the interests of the present sub-concessionaires and is in line with the actions of the PRC and President Xi Jinping to fight undesirable situations that undermine the power of the State and the ethical and moral authority of those that govern vis-à-vis the governed.

*About the author

Sérgio de Almeida Correia studied law at the University of Lisbon (1980/1985), before becoming a full-time lawyer in the 90's. He was a legal adviser of the Macao Marine Department and of the Cabinet of Justice Affairs from the Government of Macao during the Portuguese Administration (1986/1989). In 1993 he joined Rui Afonso Lawyers in Macao. In the last twenty years, he has focused his attention on citizenship rights, as well as in Civil, Corporate and Administrative law. He holds a Master in Political Science (2003) and is currently a PhD candidate at the ISCTE-Lisbon University Institute.

5. According to what is publicly known, Pansy Ho paid USD 200 million and Laurence Ho USD \$ 900 million (Chidley, Joe (2016), *The Rich 100: The Prince of Macau*, Canadian Business, Dec. 4; Cohen Muhammad (2016), *US scrutiny of Macau junkets dead as dodo; MGM Atlantic city buyout brings Pansy Ho tale full circle*, Forbes Asia, June 7).

6. Godinho, Jorge (2014), *Casino Gaming in Macau: Evolution, Regulation and Challenges*, *UNLV Gaming Law Journal*, Vol. 5:1, Spring.

7. In the same vein, Melo, Luís (2014), *World Gaming Magazine*, Macau gaming concessions renewal risk, April 19.



The operation of VIP rooms by junkets in Macau Casinos – the so-called investment in the VIP rooms



Rodrigo Mendia de Castro*



Paulo Cordeiro de Sousa*

Junkets are licensed gaming promoters (both companies and individuals) who source and procure high net worth players (VIPs) to travel to Macau to play in casinos. Junkets operate VIP rooms in casinos assigned under agreements entered into with casino operators under which they are paid substantial commissions.

Although Macau's paradigm seems to be shifting - from a gaming model mostly centred on VIP gamblers to a model increasingly targeting on mass-market - casino revenues still largely rely on VIP rooms operated by junkets.

Junkets are the only entities legally allowed to grant credit for gaming purposes, in addition to casinos. This feature might be essential in the process of convincing premium players to travel to Macau, namely for those originating from mainland China, due to the existing restrictions on money transfer abroad. In order to face the costs of bringing such VIP players to Macau, providing them with all kinds of "extras" and granting them credit for gaming, junkets need to obtain financing from third parties. Financing is generally obtained from individuals with available cash who prefer to earn high interest rates promised by junkets rather than making other types of investments, or leaving their money in the bank with a substantially lower income. Contracts between junkets and such third-party "investors" are usually referred to as "investment" contracts in any given VIP Club although the designation of "deposit" might also be used.

The granting of credit for purposes of gaming in casinos – as is the case of granting credit to VIP players by junkets – is

regulated by Law No. 5/2004. However, laws and regulations are silent regarding the regulation of the "investments" or "deposits" in the junkets – and as such those should be governed by general law.

Issues may arise when the "investment" period elapses or when an "investor" tries to recover the "investment" before the end of such period and the junket does not have the means to, or does not want to, repay the amounts received. The legal characterisation of the agreement between the junket and the "investor" is critical in order to ascertain the rights of the latter in case of non-compliance by the junket. Some argue it should be considered a cash deposit, similar to bank deposits, whereas to others it should be regarded more like a joint venture, a partnership association (*associação em participação*); others also view it as a loan agreement.

In general terms, an agreement executed by the junket and the "investor" contains clauses dealing with the following issues:

- Amount of the investment/financing;
- Amount of monthly interest and dates on which it is payable;
- Investment period;
- Notice period if the "investor" wants to withdraw the money before the end of the investment period;
- Possibility for the "investor" to use a part of the amount to play in the VIP club;
- Risk of the "investment" is assumed entirely by the VIP club.

The Court of Appeal (*Tribunal de Segunda Instância – TSJ*), in its decision dating 15 September 2016 confirming the prior decision by the First Instance Court of 14 December 2015, in the particular case under judgement, held that the so-called "investment" in the VIP room should be considered a loan, under Article 1070 of the Civil Code.

Firstly, the TSI ruled out the possibility of considering the "investment" as a cash deposit. Pursuant to the Financial System Act (approved by Decree-Law No. 32/93/M), the deposit-taking activity is reserved to bank institutions, thus the understanding of the TSI was that since the junket is not a bank, it is not legally admissible to make cash deposits with a junket.

Secondly, the TSI also ruled that the "investment" should be considered a partnership association. The partnership association agreement is defined in Article 551 of the Commercial Code. One key element of partnership association contracts is profit sharing between the associating party





(in this case, the junket) and the associate (the “investor”). In the lack of profit sharing between the two parties, such kind of agreement cannot legally exist. The junket argued that the amount payable monthly to the “investor” was referred to in the agreement as a “dividend” and thus the “investor” was sharing the profits of the junket. The court, however, considered that the so-called “dividend”, being a fixed monthly remuneration (in this case, 3 percent per month), was merely the payment of interest for money lent to the junket. Moreover, the monthly amount receivable by the “investor” did not represent a proportional participation in any profits obtained by the junket. Consequently, the TSI decided that the “investment” was not covered by the provisions applicable to partnership associations.

Finally, the TSI ruled that the amounts delivered to the junket by the “investor” were deemed to finance the activity of the latter for a certain period of time (one year) and were earning monthly interest and thus the agreement qualified as a valid civil loan. Since capital, plus interest, was not repaid in due time, the court decided that the junket did not comply with its legal obligations and was fully liable to repay the debts incurred for the performance of the business, namely the debts (capital + interest + late payment interest) towards the “investor”. Laterally, the court considered that the monthly interest amount payable should be reduced given that an interest rate of 36 percent per year (3 percent per month) is higher than the maximum interest rate allowed by law (29.25 percent).

It is, however, important not to make general assumptions; each particular “investment” agreement entered into with a junket should be reviewed carefully since not all will necessarily include the clauses addressed in the case referred to the First Instance Court and the TSI. This signifies that some agreements, according to the specific clauses therein, may not qualify as loans.

Also, what happens in the event the junket does not have the financial means or does not have sufficient assets to repay the “investors”? This issue was not under discussion in the court but we believe it should be addressed. In fact, cases where junkets received large amounts of money and simply disappear or close their business are widely known.

As mentioned, the court considered the amounts received were to be used in the performance of the junket’s business. According to Law No. 16/2001 (which regulates the gaming industry) and to Administrative Regulation No. 6/2002 (which regulates the access and performance of the gaming promotion activity), junkets must register with a concessionaire in order to be legally allowed to perform their activity (even though a junket may register in more than one concessionaire). Furthermore, Article 23(3) of Law 16/2001 sets forth that the concessionaires are liable towards the Government for the activity performed in the casinos by the gaming promoters; and Article 29 of Administrative Regulation 6/2001 sets forth that the concessionaires are jointly liable with the gaming promoters for the activity performed in the casinos by the gaming promoters, their directors and employees. It can be therefore questioned whether or not the concessionaires should be deemed jointly liable for the debts of the junkets regarding loans they have obtained for the performance of their activity.

***About the authors**

Rodrigo Mendia de Castro founded FCLaw Lawyers & Private Notaries in 2003 and continues to lead the firm. He is the head of the business, financing and litigation departments. With a track record of 19 plus years, he has practiced in Portugal, France and Macau. While a senior civil servant in the Office for Legal Affairs of the Government of Macau he participated in the revision of a section of the Commercial Code on Corporate Law and was a member of the Advisory Commission established to prepare the Civil Procedure Code.

Paulo Cordeiro de Sousa is a lawyer with more than 24 years of practice. He was a partner in a major law firm in Portugal from 2007 to 2011, and joined FCLaw Lawyers & Private Notaries in 2016. He holds a post-graduate in Business Management and Tax and completed the coursework for a post-graduate programme in Intellectual Property. His practice is mainly focused on tax law, civil law, corporate and commercial law, financial law and public law.



Demonetisation and Indian gaming



Vidushpat Singhania*

The Government of India on 8th November 2016, took the bold initiative of declaring two of the highest value currency notes in India to cease being legal tender. This had an immediate detrimental effect on the gaming industry in India, with certain casinos in Goa reporting that they had a substantial revenue loss, with some even claiming that they had shut their businesses for 2-3 days.

The casino operators stated that this was primarily because 95 percent of their patrons were domestic tourists. With the availability of currency being substantially low during the initial phases of demonetisation and limits to currency withdrawal, patrons did not have enough cash to play¹. However with the currency crunch reducing, the gaming business may be heading back to normalcy.

Demonetisation has confirmed what was perceived - that the gaming business was substantially dependent on cash/hard currency. Post the demonetisation, it needs to be understood whether the players will change to betting through digital payment options or will it slowly move back to using cash/hard currency. A number of online gaming operators have claimed that their business has gained traction since demonetisation, as a number of players now prefer using digital modes of payment. This could have been spurred by the fact that a number of players did not have the hard currency to play, or use for entertainment. They chose to play from the comfort of their houses on the online gaming platforms. Now having experienced the ease of using digital transactions for gaming, they might not go back to cash gaming entirely.

The principle behind demonetisation was to combat undeclared money, i.e. money not declared by a person in his income tax returns. The Special Investigation Team appointed by the Supreme Court of India to look into the aspect of black money in India, had expressly stated that a large amount of black money was used in the gambling industry particularly in cricket betting². With demonetisation, it is believed that the amount of black money has substantially reduced in the economy. Would this therefore not be the

1. Kaur.V, 'Goa casino businesses struggle to stay afloat post demonetisation', accessed on 11.4.2017 at <https://www.onlinebetting.in/2016/12/goa-casino-business-struggles-to-stay-afloat-post-demonetization/>

2. 'Curb betting in cricket to check black money: SIT'; The Hindu, 24th July 2015.

3. Sharma.N, 'Paytm's valuation rise 4.7% as demonetisation lends a helping hand', 15th December 2016, Bloomberg Quint.

4. 'Lucky grahak, Digi dhan: Rs. 1 crore jackpot for person making Rs. 1,590 digital payment', 9th April 2017, NDTV Profit.

5. Halliday.J, 'Brutal but effective: why team GB has won so many Olympic medals', 15th August 2016, the Guardian.

opportune time for the gaming businesses, particularly the legitimate ones, to capitalize by offering opportunities and commercially viable games to the public, so that players use their declared money and not black money towards gaming? The online gaming operators could demonstrate they are bona fide by encouraging digital transactions and implementing 'Know Your Customer' norms.

The Government of India in its 'Clarification for tax compliance for undisclosed foreign income and assets' has acknowledged that e-wallets/virtual cards may have been used for games of skill like poker and if income has been earned through this, then declaration for the same could be made like those made for bank accounts.

Demonetisation has increased the reach and availability of modes of digital transactions like e-wallets/mobile wallets. Valuations of some digital payment wallets have risen significantly post the demonetisation with Paytm valuation having risen 4.7 percent to Rs. 32,500 crores³. It seems like a natural corollary that since Indians are gradually moving towards digital currency, the apprehension to use digital money for gaming will gradually reduce.

NITI Aayog, the Government of India think tank, had introduced a lottery like scheme with daily, weekly and mega awards for consumers and merchants based on a draw of lots on 15th December 2016. On 9th April 2017 it was reported with great pomp that the President of India picked six winners from a draw of lots and declared prizes of Rs. 1 crore, Rs. 50 lakhs and Rs. 25 lakhs to the consumers using Rupay Debit Cards⁴.

This scheme was initiated for the laudable purpose of rewarding people moving towards digital transactions. If not termed as a lottery, it can be seen as akin to raffles run by non-profit organizations, whose profits are going towards charity/public purposes, thus being exempt from some of the provisions of licensing mandated by governments.

There has been a move in India to classify all national sport federations as Non-Government Organizations. Sport in India is in much need of funds to develop infrastructure, promote public well-being, develop grassroot programs and fund elite sports. It has been seen in the UK that sport has received GBP 350 million for Olympic and Paralympic sports between 2013-2017 from the National Lottery Fund, which led to the laudable performance of the UK Olympic and Paralympic squad⁵. India has the National Sports Development Welfare Scheme which was established in 1998 under the Charitable Endowments Act 1890. This fund is administered by a Council consisting of representatives of the Government of India, apex industry organizations like FICCI, CII and Assocham and representatives of sports control boards. The Government of India could explore running a welfare scheme for sports, where persons attending a sporting event across India in a given month, provided that they have bought tickets, are eligible to participate in this scheme. A lucky draw could be conducted quarterly whereby winners could be declared by drawing lots. This would spur the spectators to procure tickets for sporting events and, while enjoying the sporting extravaganza, they could also have a chance to win a jackpot.

*About the author

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Vidushpat advises on issues pertaining to betting and gambling laws, league formulation and rights structuring, government policies, TV and broadcasting rights, sponsorship and merchandising contracts, tendering procedure, anti-doping, ticketing, venue hire and brand protection.





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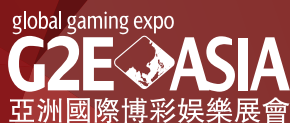
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NZ AML laws to cover sports betting, racing

New laws widening the scope of current legislation on money laundering and the financing of terrorist activity are currently before the New Zealand Parliament and similar moves are expected in Australia.

The new legislation takes in sectors that were previously exempt. Both Australia and New Zealand have previously passed laws requiring banks and non-bank financial institutions, including casinos, to comply with laws intended to counter money laundering and the financing of terrorism.

Known as AML/CFT laws these are now common in Western aligned Asian/Pacific countries following international agreements reached in the early 2000s.

The second round of legislation takes in sports betting, including racing.

New Zealand's Minister of Justice Amy Adams said: "By extending the (current) Act to lawyers, conveyancers, accountants, real estate agents, sports and racing betting, and businesses that deal in certain high-value goods, we can better prevent and detect money laundering and reduce the impact on victims and the wider community."

"Businesses that deal in certain high-value goods, including motor vehicles, jewellery and art, will also have obligations under the Act when they accept or make large cash transactions."

"The businesses that will have to comply with the Bill are at particular risk of being targeted by criminals. We have worked with the affected sectors to ensure that the changes strike the right balance between combating crime, minimizing costs to business, and meeting international obligations."

The value of transactions resulting from crime is thought to be substantial. Minister Adams told Parliament, "It is estimated that the reforms in this Bill could disrupt up to \$1.7 billion in fraud and drug crime over the next 10 years.

"Estimates also suggest they may prevent up to \$5 billion in broader criminal activity and reduce about \$800 million in social harm related to the illegal drug trade."

In New Zealand, the provisions of the new legislation have been widely discussed with affected parties such as the racing industry.

Substantial changes have already been made to the government's initial proposals, mainly to reduce compliance costs, says Ms Adams.

A report from international advisory firm, Ernst and Young, and adopted by the government, recommended changes which have "significantly reduced the predicted compliance costs – the initial estimate of up to \$1.6 billion over 10 years has been lowered to between \$800 million and \$1.1 billion."

While the new legislation takes in sectors previously exempt, it does little to change the position of the banking and financial services industry, or the operations of licensed casinos.

SkyCity Entertainment Group Ltd, which operates five of New Zealand's six licensed casinos, said the company had a comprehensive Anti-Money Laundering Programme together with supporting systems and processes which have been audited by the Department of Internal Affairs, and independently reviewed.

A spokesperson said it would continue to work closely



with the Department of Internal Affairs as its AML Supervisor and the Police Financial Intelligence Unit.

The New Zealand Racing Board's Chief Executive John Allen says the racing industry is facing significant costs, which he hopes will not "rip the guts out of the profitability of the industry."

"Significant costs are likely, although not yet fully quantified, but they are likely to run into millions of dollars. We have 650 outlets – about as many branches as the major banks."

"When we need to change out the technology in the outlets it will lead to better control over large cash bets, and we will need to train our staff to identify and report suspicious transactions."

"We support the intent of the legislation but we are very interested in making sure that costs are not loaded onto the industry and therefore affect our profitability."

Mr Allen ruled out seeking government subsidy or assistance to meet the costs preferring to seek changes to the reporting threshold and the timing of the legislation taking effect.

Specifically, he said the industry wanted the \$1,000 reporting threshold lifted to \$10,000 and the phase in period extended 18 months to four years.

"We have had discussions with officials who have indicated some flexibility on timing may be available."

"Our focus is on the regulations that will follow the passage of the legislation. A sensible timeframe is needed for us to get our people trained, the right processes in place and to get the appropriate technology installed."

Longer term, after the transition and its costs have been absorbed, Mr Allen is not expecting the racing industry's profitability to be affected.

Gambling and the Law[®]: What China means to Las Vegas



I. Nelson
Rose*

The economy of Nevada has become dependent upon “tourists,” that is gamblers, from Mainland China.

Baccarat, as we all know, is by far the favorite casino game for Chinese bettors. There are only about 300 baccarat tables in Nevada. Yet, in 2013, Nevada casinos won a total of almost \$1.5 billion from baccarat. By comparison, the state’s more than 2,600 blackjack tables won less than \$1.1 billion.

Until the crackdown by the Peoples’ Republic of China on corruption, which stifled the flow of high-rollers to both Macau and Las Vegas, Mainlanders’ contributions to casinos’ bottom lines was growing. In December 2013, Nevada casinos won three times as much from baccarat as from blackjack: \$243 million from only 328 baccarat tables, an increase of

28 percent from the year before, versus only \$82 million from 2,695 blackjack tables, a decrease of 13 percent.

By November 2016, baccarat tables won only \$85 million; blackjack \$96 million. Of course, even during the crackdown, baccarat tables were still spectacularly profitable. A blackjack table wins about \$400,000 on average in a poor year, \$500,000 when the economy is booming. When big spenders feel free to visit Las Vegas, a baccarat table wins \$5.3 million a year. When China makes it difficult for tourists to leave the Mainland, baccarat win drops to \$3 million a year, still at least six times as much as blackjack.



And it is not only high-rollers.

In 2014, China Daily ran this headline: “7,000-strong tour group breaks record in US trip.” The eight-day trip required more than 70 flights from the Mainland, and the group was expected to fill more than 30 hotels. Destinations included southern California and, of course, Las Vegas.

I was teaching Gaming Law at the University of Macau a few years ago, when the PRC, without warning, put restrictions on travel from the Mainland to Macau. Residents of the provinces nearest Macau could no longer take daily visits; they were only able to enter Macau once every three months. The impact was immediate. One of my students was in charge of the frequent visitors program for an American-owned casino. When visa restrictions were imposed from Beijing, she lost her job, because there were no more frequent visitors.

Chinese tourism has been great for places like Macau and Las Vegas. But it gives the PRC a powerful weapon. Macau, for example, is one-sixth the size of Washington, D.C. Yet, in 2013, its casinos, the only legal ones in China, won more than all the casinos in the United States, combined.

And it is not just Nevada and Macau. Chinese are now the top tourists in the world. Chinese tourists spent \$215 billion

abroad in 2015, according to CNN, “way more than anyone else.”

So, the immediate danger to legal gaming is the conflict brewing between the President of the United States and China.

President Trump brags that he doesn’t read, so there is literally no way for him to receive large amounts of information. All he knows is what he sees on T.V. or in social media, and the advice he receives, verbally, from those few individuals he listens to. He bases his decisions on his experience as a businessman.

The problem is, countries are not businesses.

Businessmen are primarily concerned with profits and their thinking is limited to months or years. Governments, on the other hand, don’t particularly care about money, except as it relates to issues like power and the welfare of their citizens. And countries think in terms of decades. China, for example, had little problem giving the United Kingdom and Portugal everything they requested for the return of Hong Kong and Macau, respectively, so long as it was clear the two territories, now Special Administrative Regions, would become mere provinces of China after 50 years.

Trump has a building project in Taiwan and has his shirts made on the Mainland, so he thinks there are two Chinas. There are not.

The PRC has never, and will never, agree to two Chinas. Worse, even bringing up the topic is considered an insult.

For example, since 1979, there has been no direct communication between a U.S. leader and the leader of Taiwan. But president-elect Trump arranged a telephone call with Taiwanese President Tsai Ing-wen.

Trump has problems with criticism. So, when the phone call became public, Trump responded with some tweets, starting with “the President of Taiwan CALLED ME...”

Trump compounds his impulsive outbursts by not allowing advisors to screen his tweets. Other presidents knew that every word that comes from a world leader is subjected to great scrutiny. Even a single wrong word could result in war. The State Department, for example, would never have allowed a president to refer to the ruler of Taiwan as the “president;” Trump did not know that as a matter of protocol, she is only referred to as the “leader” of Taiwan.

With criticism mounting, Trump made the situation worse. Instead of conducting closed-door diplomacy, as President Obama did, to try to sooth China’s anxiety, Trump escalated the controversy by going on Fox News and declaring, “I don’t know why we have to be bound by a ‘One China’ policy unless we make a deal with China having to do with other things, including trade.”

The PRC has made maps of China for more than 60 years: They always include Formosa, the main island of Taiwan, as they included Hong Kong and Macau. In fact, when Portugal agreed to turn sovereignty over Macau back to China in 1987, which was not completed until 1999, China refused to sign a treaty. Instead Portugal and China entered into a “Joint Declaration of the Government of the People’s Republic of China and the Government of the Portuguese Republic on the question of Macao.” China insisted that Macau be formally recognized as having always been Chinese territory, temporarily (for about 400 years) under Portuguese administration.

The danger of treating countries like the United States and China as businesses was shown dramatically by the comments made by Rex Tillerson during his confirmation hearing to become Secretary of State. China claims vast parts of the South China Sea are its territory, as do Vietnam and other countries. China is now building artificial islands out of



half-submerged reefs, atolls and tiny islets in the contested areas. When asked about those islands, Tillerson declared, "We're going to have to send China a clear signal that, first, the island-building stops. And second, your access to those islands also is not going to be allowed."

This might make sense and even work if this were only two companies competing over business. Tillerson, as chief executive of Exxon Mobil (he has never worked anywhere else), signed an agreement with Vietnam in 2009 to drill for oil and gas in the contested areas. The South China Sea is estimated to contain 11 billion barrels of oil and 190 trillion cubic feet of natural gas.

The first statement implies the U.S. would use military action to prevent China from its island-building. But the second statement, promising a blockade, is an act of war.

Neither Trump nor Tillerson, nor any of the few advisors Trump listens to, understand what it means in China to save face. The leaders of the PRC have to look strong; they cannot be seen as tolerating an insult. Saving face requires revenge.

Anyone who knew anything about China would know that the PRC had to retaliate. To save face, China immediately seized a U.S. Navy submarine drone and announced that it was putting up anti-aircraft guns on the artificial islands it created in the South China Sea, it had promised it would not arm.

The danger to legal gaming is that Trump never backs down. He openly and consistently revels in revenge. He is famous for saying that whenever he gets hit, he hits back harder. But he also enjoys escalating a confrontation. Hitting back harder "does make you feel good, to be honest with you, I've done it many times."

So now we have a Chinese culture that requires saving face, and an insecure, thin-skinned president who believes

escalating a conflict is a sign of strength.

How will China respond? Short of a shooting war, China is sure to use its enormous economic power.

Restrictions on tourism involving gaming is a natural target for China to retaliate against Trump. Everyone still associates the Trump name with casinos. He owns a large hotel in Las Vegas. And two of his top supporters, Steve Wynn and Sheldon Adelson, would be severely hurt if Chinese Mainlanders could not gamble in Macau and Las Vegas.

Before Trump became president, China was expected to become the third-largest source of foreign tourists to the U.S., after Canada and Mexico. That now looks like it is not going to happen.

Unless Trump builds that wall and scares off visitors from Mexico.

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Smoke gets in your eyes: Changes to Macau's smoking policy

Since October 2014, smoking at casino premises located in Macau (with exception of the airport style smoking lounges with no gaming activity) is only permitted in limited access gaming areas approved by the government on a case-by-case basis – the commonly named “VIP rooms or VIP salons.”



This 2014 regulation that banned smoking from the main casino gaming floors was one more step towards the government's frequently announced ultimate goal to have totally smoke-free casinos. And because the total ban was always the objective of the government, the 2014 policy was not enough. Soon after its enactment came the message that the smoking control laws were again under review, which would finally contemplate a total smoking ban for casinos.

In addition, since 2014 the government has not approved a single new limited access gaming area where smoking would be allowed, despite several applications, including for new casinos that have opened: Sands Cotai Central, Galaxy Phase II, Studio City, the Parisian and Wynn Palace. It is important to stress that the current legislation grants casinos the right to apply for smoking to be allowed in limited access gaming areas, which would imply a fair assessment by the government on each case. However, it is a dead letter as the government just would not approve any request.

Recent public statements by government representatives on smoking control policy indicate that the total ban on casino smoking will be effective from January 1, 2018, or the latest by January 1, 2019. How will this affect the local gaming industry and the exceedingly gaming dependent Macau economy? No one knows for sure, but we can already devise a gloomy scenario - it is widely known that a large portion of casino patrons (namely those coming to Macau) take great pleasure in smoking while gambling.

On the other hand, if the total ban policy is adopted, Macau will have the most aggressive anti-casino smoking policy in the world, that not even competing gaming hubs such as Australia and Singapore have dared to implement – and we all know how these latter jurisdictions are in regards to safeguarding labor rights. It begs the question of why such jurisdictions have not gone so far as to implement a total smoking ban and still have allowed smoking in certain areas of the casinos.

The answer probably relates to the fact that due consideration was given to the (strong) possibility of a sizable negative impact on revenues deriving from a total smoking

ban. Such thoughtful consideration should resonate with the Macau policy makers, especially taking into account the fact that the importance of the gaming activity to the overall economy of Australia or Singapore is (by a long shot!) much lower than the overwhelming importance in the non-diversified Macau economy.

The total smoking ban is far from being a global trend – most (not to say all) regional competitors and potential newcomers are clearly allowing smoking in designated areas. Australian states New South Wales and Victoria allow smoking in VIP Rooms. Singapore permits smoking in certain casino-designated areas. So does Las Vegas, Manila, Cambodia or Malaysia. Japan, a future direct competitor of Macau has never announced a total ban of smoking for their upcoming casinos, which will most likely include smoking areas with gaming.

Macau's announced policy of a total smoking ban will not be setting a trend across the industry, on the contrary, Macau will be the restrictive exception in relation to the liberal tendency in the midst of the gaming jurisdictions. At what cost? We will need to wait and see.

No one ignores the importance of a tobacco control public policy and casino workers outcry in terms of the need to be protected against secondhand smoking. Having said that, to make Macau the most restrictive jurisdiction in the world in terms of casino smoking prohibition may prove to be an excessively risky step for a city that wants to continue to be the gambling capital of the world.

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Francisco Gaivao is a lawyer practicing in Macau since 2002. He is the former Vice President, Legal Affairs, Macau, of Melco Resorts & Entertainment. From March 2008 to April 2017 he was the head of the group's Macau legal department. He has worked extensively in matters involving the negotiations and granting of a Macau gaming license and the opening of casinos and integrated resorts in Macau.

Japan's Integrated Resort Promotion Law



Kazuaki Sasaki*

The Japanese Government finally passed the Integrated Resort Promotion Law in the Diet on 15 December and it was delivered on 26 December, 2016.

An integrated resort (IR) refers to a resort in which casinos are the main engine. The Japanese government will only approve IRs and not standalone casinos. The IR Promotion Law lays the groundwork for making an IR implementation law within one year. Formally, the IR promotion law is known as "The Promotion Law for Specific Complex Tourism Facilities Area Development." The following highlights some of the main points of the law.

The objective of the law is the promotion of tourism and regional economies as well as the improvement of finances.

The law has a definition of "specific complex tourism facilities". This refers to casinos established and owned by private entities and the facilities for meetings, recreation, exhibitions, accommodation and so on that are collectively used for promotion of tourism. The "specific complex tourism facilities" can be operated in areas of the country permitted by the competent minister, with the agreement of the local government. This definition, allowing casinos established and owned by the private sector, is very important because there is no precedent for private companies operating gambling facilities. In Japan, all gaming is prohibited in principle, except if a special law permits, such as horse racing, on which there is pari-mutuel betting, which is controlled by the public sector. The IRs will be the first case of gaming owned and operated by the private sector in Japan. In relation to Pachinko and Pachinko Slot, the parlors are owned and run by the private sector, but they are not considered as gambling, just amusement, and are regulated by the entertainment business law.

A Gaming Control Board will be established in the Cabinet Office to regulate casino officials and maintain order and safety

(Article 11). The Headquarters were established on 4 April in 2017 and will be responsible for an IR implementation law (Article 15). The head is the prime minister and office members are senior civil servants who were working at the Ministry of Land, Infrastructure and Transport, Ministry of Finance, National Police Department and Ministry of Health, Labor and Welfare etc. Around 100 members are working in this office. Under this organization, experts will meet to discuss the IR implementation law.

National and local government may collect taxes from the casino operator (Article 12). The matter shall be regulated by a separate law. Presently there is no gaming tax in Japan because all public gaming sectors use the Pari-Mutuel system. As mentioned, Pachinko and Pachinko Slot are not considered gambling, just amusement. This will be a first in Japan, too.

The law provides that national and local government may collect an entry fee from the casino operator (Article 13). There is no certainty that there will be such a fee and whether to collect an entry fee or not will be up to the national and local governments.

After enactment of this law, a law on "Specific Complex Tourism Facilities Area Development" must be enacted within one year (Article 5). The basic policy is to attract staying type tourism that will be globally competitive, revitalize the local economy, and return regulated casino revenue appropriately to society (Article 3).

The IR promotion law was approved on 15 December in 2016. At the same time, the Japanese government decided on supplementary items that may affect the IR implementation law.

1. Japan's IRs must prepare Japanese-like tourism resources and promote tourism and revitalize the local economy.
2. Government must limit the number of IR licenses because of international competitiveness and to prevent gambling addiction.
3. Government must take measures to prevent gambling addiction, including existing gaming. Not only gambling (public sector), but also pachinko and pachislot (amusement).
4. Government must consider junkets very carefully.
5. Local government congress agreement must be required to apply IR license.



*About the author

Kazuaki Sasaki, Ph.D is an Associate Professor at Tokyo University in the Department of International Tourism Management. He is also a Director of the IR (Integrated Resort) Gaming Society, a Director of the Japan Academic Society of Hospital Management and a Member of the Asia Pacific Association for Gambling Studies Academic in Macau.

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