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

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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 – TSI*), 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.