

CASINO GAMING IN MACAU: EVOLUTION, REGULATION AND CHALLENGES

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ABSTRACT

This paper provides an overview of the evolution of the legal framework applicable to the casino gaming industry in Macau. The focus is on the evolution of the system of concessions and sub concessions, the regulation of gaming promoters, the complex VIP segment, as well as the anti-money laundering requirements. A final section considers the rapidly growing competition posed by the spread of gaming in various jurisdictions in the region. Overall, while casino gaming grew exponentially in recent years, there are numerous issues from the past which pose future challenges.

I. INTRODUCTION: A TOTAL DEPENDENCY ON GAMING

Macau, while under colonial Portuguese rule,¹ first legalized the commercial operation of games of chance in 1849, starting with the game of *fantan* 番攤.² This decision of then Governor Ferreira do Amaral (g. 1846-1849) was made in order to generate desperately needed tax revenue, essential to sustain

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¹ See JORGE A.F. GODINHO, *MACAU BUSINESS LAW AND LEGAL SYSTEM 1* (2007) (stating Portuguese rule lasted from around 1557 to 20 December 1999).

² *Fantan* is a pure game of chance: it does not require any skill. A small pile of buttons is covered or 'cut' by the dealer with a bowl, so that an unknown or random number of buttons is hidden. Betting is on how many buttons shall remain on the table after all the covered buttons are removed in groups of four: either 1, 2, 3 or 4. A bet on one number pays 3 to 1. There are several combination bets with lower odds. Until 1961 the house had a commission of 10%, which was lowered to 5% in 1962. See Xavier Paulès, *Gambling in China Reconsidered: Fantan in South China During the Early Twentieth Century*, 7(2) *INT'L J. OF ASIAN STUD.* 179, 179 (2010). The current regulation of the game is set forth by *Regulamento oficial do Fantan* (2004), approved by Despacho Regulamentar Externo do Secretário para a Economia e Finanças n.º 58/2004 [Official Regulation of *Fantan*, approved by External Regulatory Dispatch of the Secretary for Economy and Finance no 58/2004].

the functioning of the colony. The public budget had been seriously impacted by the creation of the British settlement in Hong Kong island in 1842: most of the commerce and shipping activities moved there, causing Macau to lose tax revenue and forcing a major reorientation of its economy.³

Over 160 years have passed but the need for Macau to rely on the revenue generated by the gaming industry has not diminished. Today, it is clear that various efforts and attempts to diversify the economy made over the years, such as on industry and textiles, have for the most part failed. Macau is *totally dependent* on the gaming industry: in 2012, a staggering 91.5% of the public revenue came from gaming taxation.⁴ Traditional industries such as textiles and toy factories have been steadily disappearing or moving elsewhere, namely to Mainland China where costs such as labor or electricity are lower and land is available more easily. Recent efforts to diversify, namely relating to creative industries, have so far only produced negligible results. The gaming industry is absolutely necessary if Macau is to survive financially. If games of chance were authorized in Guangdong province or in Hong Kong, Macau as it exists today would disappear.

II. LEGAL FRAMEWORK AND RECENT EVOLUTION

The following discussion only considers casino games of chance and does not touch upon Macau's many other forms of gambling, including: horse racing, dog racing, the pacapio 白鴿票 (baige piao, 'white pigeon') lottery or instant lotteries and sports betting. Macau has not regulated online casino games.

The legal framework governing Macau's gaming industry is based on the administrative law concept of *concession*. Concession is a temporary contract between the Government and a private entity that has been selected by means of a public tender. Macau follows a concession model that was created in Portugal in 1927.⁵ The concession methodology implemented by Macau today has been used since 1961.⁶

In a system of concessions, gaming is an activity reserved for the Government.⁷ It is seen as a privileged activity that is part of the public economy. Therefore, the private sector cannot operate gaming, unless under the express

³ See Jorge A.F. Godinho, *A History of Games of Chance in Macau, Part 2, The Foundation of the Macau Gaming Industry*, 17(2) GAMING L. REV. & ECON. 107, 107 (2013).

⁴ MONETARY AUTHORITY OF MACAU, 2012 ANNUAL REPORT 65 (2013), available at http://www.amcm.gov.mo/Annual_Reports/Report.htm.

⁵ Regulated games of chance were permitted in Portugal in 1927, following the publication of Decree No. 14.643, of December 3, 1927, and the subsequent granting of concessions in various coastal cities and resorts. See, IRENE VAQUINHAS, *Nome de código "33856": Os "jogos de fortuna ou azar" em Portugal entre a repressão e a tolerância (de finais do século XIX a 1927)*, [Code Name "33856": "Games of Chance" in Portugal from Repression to Tolerance (From Late Nineteenth Century to 1927)] (Livros Horizonte 2006) (Port).

⁶ See *Diploma Legislativo no. 1.496*, BOLETIM OFICIAL DE MACAU [Legislative Diploma no. 1.496, MACAU OFFICIAL BULLETIN], Supplement, July 4, 1961.

⁷ Lei n.º 16/2001 Regime jurídico da exploração de jogos de fortuna ou azar em casino Artigo 3(1) (2001) [Law 16/2001 Legal regime of operation of games of chance in casinos art. 3(1)], available at <http://bo.io.gov.mo/bo/i/2001/39/lei16.asp>. [hereinafter Law No. 16/2001] ("The operation of games of chance, as well as mechanic or electric gaming machines,

permission of the Government. Legally, gaming is a ‘public service,’ much like the supply of water, electricity, telecommunications, and so on. Under the ‘public service’ model, access is permanently closed to the private sector. But once every few years the Government organizes a public tender to issue temporary gaming concessions. All decisions are taken within such tender process, which can be said to be a sort of ‘big bang’ that sets or is supposed to set the scene for years or even decades. The initial ‘big bang’ happened in 1961-62, another happened in 2001-02, and the speculation is that another may happen around 2020-22 when the current concessions are scheduled to expire, unless they are extended.

In the system of concessions, the concessionaire accepts and is under an obligation to perform certain minimum investments, especially the construction of a casino-hotel, which should be executed within a specific deadline. If the obligations under the concession contract are not timely performed, the concession may be withdrawn.⁸ And when a concession expires, the assets used and the casino space that has been built revert to the State.⁹ At that point, the Government is free to ‘deal’ again.

In Macau, the system of concessions does not operate as ‘one concession, one casino.’ A concessionaire may be allowed to open as many casinos as may be feasible, provided that the Government permits such development.¹⁰ In addition, the Macau Government has in the past allowed or tolerated ‘partnerships’ between concessionaires and other investors, a matter discussed in more detail below.

The origin of the current market structure derives partly from the 1960s and 1970s, and partly from events subsequent in 2001-02.

The Portuguese government of Macau, under Governor Silvério Marques (g. 1959-1962), granted a monopoly casino concession in December 1961 to STDM, a company with four main shareholders: Stanley Ho, Henry Fok, Teddy Yip, and Yip Hon.¹¹ This monopoly concession included the obligation to build a top-notch casino and luxury hotel.¹² The key objectives were to create a tourism industry, raise the funds needed to develop new areas of the city, build infrastructure, and stimulate the economy.

STDM started its operations as scheduled on January 1, 1962. Soon thereafter, STDM opened Casino Estoril and also the floating casino Macau Palace, an adapted barge moored in the Inner Harbor. STDM then opened the landmark

by an entity distinct from the Macau Special Administrative Region, shall always be subject to a prior concession”).

⁸ *Id.* at art. 47.

⁹ *Id.*

¹⁰ At the time of writing, only MGM Grand Paradise and Wynn Resorts (Macau) have a single casino, although both are building new properties. See *Information of Casino Addresses and Websites*, GAMING INSPECTION AND COORDINATION BUREAU, MACAO SAR, http://www.dicj.gov.mo/web/en/information/contacts_casino/index.html (last visited March 27, 2014).

¹¹ See Jorge A.F. Godinho, *A History of Games of Chance in Macau, Part 1, Introduction*, 16(10) GAMING L. REV. & ECON. 552, 554 (2012). For the political context, see Moisés S. Fernandes, *How to Relate with a Colonial Power on its Shore: Macau in the Chinese Foreign Policy, 1949-1965*, 17 BULL. PORT. JAPANESE STUD. 225, 225 (2008).

¹² The concession contract is published in *Boletim Oficial*, 21 April 1962, pp. 488 ff.

Lisboa casino-hotel complex in early 1970. STD M opened many other operations around Macau over the following years and became a very profitable company.

In 1982, a change was made to Macau's gaming laws, allowing other concessionaires to enter the market that had been under the sole control of STD M.¹³ But this legal possibility was not acted upon. Among other factors, the political climate was not appropriate; there were too many uncertainties regarding the future of Macau, following the developments that had taken place in Hong Kong.¹⁴ Portugal and China were focusing on the transfer of sovereignty, which was a very complex process, and it would be strange for such major transformation to be conducted by a Portuguese Governor during Portugal's last day's in command. Instead of increasing the number of concessions, the Government opted to increase the taxation of gaming throughout the 1980s and 1990s.¹⁵ During this period, the STD M monopoly concession was renewed and renegotiated several times, lasting for forty years and three months, coming to an end on March 31, 2002.

The opening of the gaming industry to competition in 2001-02 was partly driven by various factors besides the basic purpose of enabling a competitive environment. One was the perception that STD M had too much power over the Macau Government and was not improving its facilities as it should.¹⁶ Another was the crime wave of the 1990s,¹⁷ which was still very present in the collective memory of Macau society.

On December 20, 1999, the transfer of sovereignty over Macau from Portugal to the People's Republic of China (PRC) took place. The Basic Law of the Macau Special Administrative Region, its quasi-constitutional charter, assigned the definition of gaming policy to the Region.¹⁸ The government of the Chief Executive Edmund Ho immediately started working on the opening of the gaming market to competition. The historic Law 16/2001 was published

¹³ See Lei n.º 6/82/M Jogos de fortuna ou azar [Law 6/82/M Games of Chance] (1982), available at <http://bo.io.gov.mo/bo/i/82/22/lei06.asp> (Adopting the new legal framework for concessions to operate games of chance in Macau and repealing Articles 1 through 14, 36, and 53 of the Legislative Diploma number 1.496 of 1961).

¹⁴ See GODINHO, *supra* note 1, at 1.

¹⁵ It is beyond the scope of this text to track the evolution of the taxation of gaming from 1976 to 2001. The general point is that the tax rate kept going up.

¹⁶ Various observers cite a certain lack of investment; see e.g., Wuyi Wang & William R. Eadington, *The VIP-Room Contractual System and Macao's Traditional Casino Industry*, in *China: An International Journal* 25 (U. Nev. Reno Economics Working Paper Series, Working Paper No. 07-001, 2007) (it is said that "Up to 2000 and into the new millennium, the casinos of the monopoly concessionaire in Macao, STD M, suffered from an obvious absence of capital investment and showed other physical and operational characteristics consistent with the behavior of a monopoly over the past four decades").

¹⁷ It is beyond the scope of this text to describe in detail the events of this period, which generally has created a negative reputation for Macau.

¹⁸ For the context, see GODINHO, *supra* note 1, at 4.

in September 2001.¹⁹ It stated that three new gaming concessions would be awarded by means of an international public tender process.²⁰

The international bidding process was launched two months later. A total of twenty-one companies and joint ventures participated, many of which were globally recognized gaming companies.²¹ The results of the bidding process were announced on February 8, 2002.²² The tender process culminated with the government awarding three casino gaming concessions: one to Wynn Resorts (ranked first); one to a joint venture between Galaxy Entertainment of Hong Kong and Las Vegas Sands (ranked second); and one to SJM (of Stanley Ho; ranked third).²³

From 2002 to 2006 three additional sub-concessions were authorized by the Macau Government: in 2002, a sub-concession from Galaxy to Las Vegas Sands was granted; in 2005, a sub-concession from SJM to a joint venture between the US gaming operator MGM and Pansy Ho, the daughter of Stanley Ho was granted; and in 2006, a sub-concession from Wynn Resorts to a joint venture between Melco of Hong Kong (owned by Lawrence Ho, son of Stanley Ho) and Crown (which acquired the gaming assets formerly of Publishing and Broadcasting Limited, known as PBL) of Australia was granted.

The subsequent regulatory evolution, from a single concessionaire paradigm to a multi-sub-concessionaire paradigm, transformed the gaming industry in Macau. Along with this rapid growth and change in gaming properties, came a rapid growth and development in gaming law.

III. REGULATORY DEVELOPMENTS

Gaming promoters were first regulated by a law of 2002, which was part and parcel of the package of laws introducing competition.²⁴ Prior to that, gaming promoters (known as junkets) had been operating since the late 1970s without a formal legal framework in place. However, starting in 2002, gaming promoters were required to be licensed. Of primary importance, promoters must be and remain suitable.²⁵ Their arrangements with the sub/concessionaires are subject to regulatory review.²⁶ Gaming promoters are necessary to recruit

¹⁹ The legal framework approved in 2001 is in force at the time of this writing, and it is designed to apply until 2020-22, when the current concessions and sub-concessions are scheduled to expire.

²⁰ Law no. 16/2001, *supra* note 7, art. 7(2).

²¹ See Harald Bruning, *21 Firms Take Casino Gamble*, SOUTH CHINA MORNING POST, Dec. 8, 2001.

²² Despacho do Chefe do Executivo [Order of the Chief Executive] no. 26/2002, February 8, 2002, available at <http://bo.io.gov.mo/bo/i/2002/06/despce.asp#26>.

²³ *Id.*

²⁴ Regulamento Administrativo n.º 6/2002 Regula as condições de acesso e de exercício da actividade de promoção de jogos de fortuna ou azar em casino [Administrative Regulation No. 6/2002 Regulates the conditions of access to and pursuit of the business of promoting games of chance in casinos] (2002), available at <http://bo.io.gov.mo/bo/i/2002/13/regadm06.asp> [hereinafter Administrative Regulation 6/2002].

²⁵ Law no. 16/2001, *supra* note 7, art. 23 (the law does not define suitability as such, and only provides examples of topics to be taken into account, especially professional experience and reputation).

²⁶ *Id.*

and retain premium players for the so-called VIP rooms of the casinos. The importance of promoters grew considerably, albeit very surprisingly, in the 2000s. Gaming promoters personally know and recruit the patrons, especially in Mainland China. Gaming promoters also grant credit for gaming at their own considerable risk: credit for gaming is legally enforceable in Hong Kong, but it is not legally enforceable in Mainland China.²⁷ Gaming promoters also often play a key role making funds available to Macau's gamblers; as with credit, it may happen that no money needs to be transferred. If Mainland China enforces stricter controls on cash and credit flowing to and from the Mainland, this may impact the gaming industry of Macau.

Credit for gaming was regulated in 2004. Previously, all credit fell under a criminal law prohibition, the crime of usury for gaming. There was pressure from the industry, especially from Wynn Resorts, to have credit legalized and regulated.²⁸ Today, a substantial part of the gross gaming revenue is generated via credit. Current laws and regulations allow concessionaires, sub-concessionaires, and gaming promoters to grant credit;²⁹ though, in 2009, maximum limits were imposed on the commissions paid to gaming promoters.³⁰ Notwithstanding, unauthorized credit lending is still a crime and any violation is punishable under the usury (loansharking) laws.³¹

Anti-money laundering laws were first enacted in 1997 and 1998.³² They were then subsequently further developed during 2006, in the wake of the new international standards approved after the terrorist attacks of 9/11, and also following the local bank run on the Delta Asia Bank.³³

A law was passed in 2012 raising the minimum age to work in the gaming industry and enter casinos and gamble to twenty-one years old.³⁴ The general age of majority in Macau continues to be eighteen. The same law also regulated exclusion programs for the first time.³⁵

²⁷ See Jorge Godinho, *Should Credit Agreements Between Casinos and Patrons Be Subject to Prior Government Approval? A Note on Wynn Resorts (Macau) S.A. v. Mong Henry*, 14 GAMING L. REV. & ECON. 541, 542 (2010).

²⁸ Jorge Godinho, *Credit for Gaming in Macau*, 10 GAMING L. REV. 363 (2006).

²⁹ Lei n.º 5/2004, Artigo 3(1) Regime jurídico da concessão de crédito para jogo ou para aposta em casino [Legal regime for granting credit for gaming and betting in casinos] (2001) [Law 16/2001 Law 5/2004, art. 3(1), available at <http://bo.io.gov.mo/bo/i/2004/24/lei05.asp>. (Gaming promoters must have arrangements in place with at least one of the sub/concessionaires where the gaming on credit that they have organized will take place).

³⁰ Despacho do Secretário para a Economia e Finanças [Dispatch of the Secretary for Economy and Finance] no. 83/2009, available at <http://bo.io.gov.mo/bo/i/2009/38/despsef.asp#83>.

³¹ Lei n.º 8/96/M, Artigo 13 Jogo ilícito [Law 8/96/M, art. 13 Illegal Gambling] (1996), available at <http://bo.io.gov.mo/bo/i/96/30/lei08.asp#8>.

³² For a detailed account, see Jorge Godinho, *Financial Strategies of Crime Control in the Macau SAR*, in STUDIES IN MACAU CIVIL, COMMERCIAL, CONSTITUTIONAL AND CRIMINAL LAW 259 (Jorge AF Godinho ed., 2010) [hereinafter *Financial Strategies*].

³³ Which was alleged to have ties with North Korea by the previous US Administration; such claims were never substantiated and the bank is currently operating normally after a period of public administration.

³⁴ Lei n.º 10/2012, Artigo 2(1)(1) Condicionamento da entrada, do trabalho e do jogo nos casinos [Law 10/2012, art. 2(1)(1) Restrictions on entry, work and play in casinos] (2012), available at <http://bo.io.gov.mo/bo/i/2012/35/lei10.asp> [hereinafter Law No. 10/2012].

³⁵ *Id.* Artigo [art.] 6.

New regulations on gaming machines were also passed in 2012,³⁶ and a partial smoke ban in casinos, covering 50% of the floor area, came into force on January 1, 2013.³⁷

IV. VISITORS AND TOURISM

Traditionally the largest number of visitors to Macau were from Hong Kong, which is why nearly all of Macau's gaming is conducted in Hong Kong dollars, though a small number of tables and machines also accept the Macau *patacas*.

The number of visitors to Macau has grown quite rapidly in the last decade. Today, Macau's main tourist market is Mainland China, followed by Hong Kong and Taiwan. This has to do with the fact that in July 2003, an 'Individual Visit Scheme' was started, whereby visitors from Mainland China became permitted to visit Hong Kong and Macau on an individual basis, not needing to be part of a tour group. This caused a rapid rise in the number of arrivals. In addition, levels of wealth and economic development have also been increasing at a fast pace in China. These visitors typically like to gamble and bring with them large amounts of money.³⁸

Macau International Airport was built during the Portuguese administration and opened for traffic on November 1995.³⁹ It is a relatively small airport serving regional destinations and has not yet reached its capacity.

There are very good maritime transportation links between Macau and Hong Kong as well. In fact, passengers can fly to Hong Kong International Airport⁴⁰ and proceed directly to Macau via a ferry link, without the need to pass Hong Kong immigration. This ferry link can only be used by passengers in international transit. Other passengers must go from Macau to the Hong Kong Airport via the ferry to Hong Kong central.

A high-speed rail line from Guangzhou to Zhuhai north has also been in operation since 2010 and the frequency of trains is projected to increase. A link from Zhuhai north to the Macau border at Gongbei opened in early 2013, making it now much faster to reach Macau from Mainland China.

A bridge and tunnel linking Macau with Hong Kong via Lantau Island, where the Hong Kong International Airport is located, is under construction and is expected to open in 2016. The bridge and tunnel will make day trips from Hong Kong much easier.

³⁶ See Regulamento Administrativo n.º 26/2012 Regime de fornecimento e requisitos das máquinas, equipamentos e sistemas de jogo Artigo 1(1) [Administrative Regulation No. 26/2012 Supply arrangements and requirements for gaming machines, equipment and systems art. 1(1)] (2012), available at <http://bo.io.gov.mo/bo/i/2012/48/regadm26.asp>.

³⁷ Regulamento Administrativo n.º 5/2011 Artigo 5(1) Regime de prevenção e controlo do tabagismo [Administrative Regulation No. 5/2011, art. 5(1) Regime for prevention and control of smoking] (2011), available at <http://bo.io.gov.mo/bo/i/2011/18/lei05.asp>.

³⁸ While technically there are currency controls in place, these are mostly avoided by anyone willing to do so, for example by using debit cards while in Macau.

³⁹ See *Airport History, Macau International Airport*, <http://www.macau-airport.com/en/about-us/about-mia/airport-history> (last visited on Mar. 25, 2014).

⁴⁰ Also known as Chek Lap Kok Airport.

V. GAMING PATTERNS AND MARKET EVOLUTION

Table games clearly dominate Macau’s gaming market. This is a constant feature, which, in this regard, is totally opposite from Nevada. When Western games were introduced in 1962, the most popular were blackjack and roulette. Since the 1970s, the most popular game is baccarat, a simple and fast game with a low house advantage that depends wholly on chance. The baccarat VIP market today generates around 70% of Macau’s total gross gaming revenue. Sic bo (a Chinese game played with three dice, also known as *big and small*; also as *cussec*) and blackjack follow. Slot machines are currently of relatively small importance, but their revenue is growing more rapidly than that of the overall market.

Gross revenue games of fortune 2003-2013 (source: DICJ)								Highlighted: Highest year			
Game Types	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Roulette	47	128	186	248	371	693	694	672	783	892	940
Black Jack	637	1,211	1,459	1,622	1,917	2,247	1,903	2,290	2,712	2,950	3,052
VIP Baccarat	22,178	29,783	28,864	36,783	55,762	73,772	79,834	135,648	196,126	210,850	238,524
Baccarat	3,102	5,617	9,929	11,526	16,211	21,052	25,498	34,917	48,669	66,251	91,599
Mini Baccarat	-	363	519	385	304	212	added up	-	-	-	-
Fantao	136	147	143	145	164	190	174	183	211	249	290
Cussec / Sic Bo	682	1,212	1,526	1,923	2,755	3,043	2,826	3,555	4,774	5,546	6,756
Paikao	149	136	95	76	77	54	44	86	114	87	96
Boule	4.2	5.7	0.2	-	-	-	-	-	-	-	-
Mahjong	-	-	-	-	-	-	9	27	34	70	203
Slot Machines	236	640	1,250	2,053	3,594	5,653	6,503	8,618	11,425	13,244	14,384
Mahjong Paikao	54	35	6	4	3	2	0.4	-	-	4.7	8.3
Makccarat	-	-	-	-	9	16	8	4	4	-	-
3-Card Poker	185	199	172	128	114	73	94	131	191	211	222
Fish-Prawn-Crab	1,071	1,295	1,053	874	654	264	152	93	51	22	9
3-Card Baccarat	153	225	257	247	231	209	184	219	281	347	414
Craps	-	-	-	-	9	89	92	163	151	137	145
Texas Holdem Poker	-	-	-	-	-	54	146	216	277	289	270
Pachinko	8	8	2	-	-	-	-	-	-	-	-
Tombola	1.6	1.3	1.2	2.0	2.0	1.8	1.8	1.7	1.4	1.4	1.4
Lucky Wheel	7	32	39	27	17	21	25	32	35	35	24
Live Multi Game	-	-	-	-	-	-	-	153	311	895	1487
Football Poker	4	2	-	-	-	-	-	-	-	-	-
Stud Poker	16	337	522	556	750	925	938	1060	1309	1472	1661
Q Poker	-	-	24	24	20	7	5	1	-	-	-
Casino War	-	-	-	0.1	61	185	164	157	226	246	293
Fortune 3 Card Poker	-	-	-	-	-	-	55	109	141	206	407
Dragon Phoenix	-	-	-	-	-	-	-	-0.04	5.03	0.81	-
Fortune 8	-	-	-	-	-	-	2.5	-	-	-	-

Table 1: Gross revenue games of fortune 2003-2013⁴¹

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VIP baccarat absolutely dominates, and has had phenomenal growth since 1976. Mass market baccarat takes the second spot, followed by slot machines (which, in fact, include many machines that are electronic versions of various table games). The best of the rest is sic bo. The next on the list are black jack, stud poker and roulette, all of which have been recording new all-time highs, as seen on Table 1. The biggest novelty in the last years is the stunning rise in ‘live multi game’ gambling, the so-called ‘stadiums’ where a live dealer is dealing a game (typically baccarat) to a large number of players who bet using electronic terminals. More than 160 years down the road, the venerable game of fantan, which once was the biggest game, continues to do very well and had another record year in 2013. The same cannot be said of craps.

In general, the expansion of gaming in Macau over the past ten years has been staggering and way beyond any predictions that could have been made in 2001 when the reforms were set in motion. It could be argued that Macau’s growth in gaming represents the biggest explosion of gambling in world history, and is due, in part, to the large numbers of players from an increasingly affluent Mainland China being allowed to travel to Macau on a regular basis. This was coupled with a very large expansion in the number of casinos’ tables, and machines.

	Gross gaming revenue	Casinos	Table games	Slot machines
	(MOP)	(no.)	(no.)	(no.)
2002	22,842,627,000	11	339	808
2003	29,475,855,000	11	424	814
2004	42,305,640,000	15	1,092	2,254
2005	46,046,926,000	17	1,388	3,421
2006	56,623,468,000	24	2,762	6,546
2007	83,022,245,000	28	4,375	13,267
2008	108,772,000,000	31	4,017	11,856
2009	119,369,000,000	33	4,770	14,363
2010	188,343,000,000	33	4,791	14,050
2011	267,867,000,000	34	5,302	16,056
2012	304,139,000,000	35	5,485	16,585
2013	360,749,000,000	35	5,750	13,106

Table 2: Gross gaming revenue, casinos’ tables and machines 2002–2013 (source: DICJ)

The number of casinos has been growing rapidly. When the concession to STDM expired on March 31, 2002, all of its then eleven casinos were transferred to SJM and continued in operation. This situation remained stable from the start of the new concession to SJM until the opening of the first casinos of other sub/concessionaires in May (Venetian) and June (Galaxy) of 2004. Since then, twenty-four more casinos have opened.

⁴¹ The figures are millions of Macau *patacas*. The exchange rate is 1 HKG = 1.3 MOP. The source is DICJ. The highest year is highlighted.

The years from 2001 to 2003 were a period for the discussion and design of the new system, approval of the legislation, the organization of the tender process, the signature of the concession contracts, and the start of the licensing of gaming promoters. A sub-concession (the first one) was authorized to the Venetian in order to avoid what would be perceived as a major failure if this company would not operate in Macau.⁴²

The years from 2004 to 2006 can be best described as a 'boom' period. A large number of casinos were opened or started construction. Gaming revenue increased dramatically. Two more concessions were authorized, but these were sold for large amounts of money: SJM received \$200 million from MGM and Pansy Ho and Wynn Macau received \$900 million from Melco Crown⁴³

From 2007 to 2009, the market was affected by various issues and the rate of growth slowed. This was due first to the scandal of the former Secretary for Public Works Ao Man Long involving corruption and money laundering, which erupted with his arrest in December 2006, casting a shadow over the economy, as wide ranging suspicions emerged regarding which projects had involved illicit payments. A freeze on the approval of new gaming projects was subsequently announced. Following these developments, the impact of the global economic crisis started to be felt, slowing down the rate of growth. A cap on the commissions payable to gaming promoters was imposed by law in 2009.⁴⁴ A cap on the number of tables was also imposed in March 2010, at 5500 tables until 2013, to grow only at an annual fixed rate.⁴⁵

Since 2010, under the Government of Chief Executive Fernando Chui Sai On, the pace of growth of the industry has again accelerated, and the monthly revenue reached an all-time high in February 2014.⁴⁶

VI. GAMING PROMOTERS AND THE VIP MARKET

One of the specific features of the Macau gaming market is the considerable importance of gaming promoters. Gaming promoters, in fact, have existed

⁴² The subconcession contract has not been made available to the public in Macau at this time. However, an English translation is available as Exhibit 10.65 to a SEC filing by Las Vegas Sands, Amendment No. 5 Registration Statement on Form S-1 (Reg. No. 333-118827), December 10, 2004, *available at* www.secinfo.com/dVut2.113Ue.c.htm.

⁴³ Press Release, Wynn Resorts, Wynn Resorts Limited Announces Sale of Subconcession for \$900 Million to Publishing and Broadcasting Limited (Mar. 5, 2006), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=132059&p=irol-newsArticle&ID=826978&highlight=>.

⁴⁴ Regulamento Administrativo n.º 27/2009 Artigo 27(1) Alteração ao Regulamento Administrativo n. 6/2002, no respeitante ao pagamento das comissões ou outras remunerações que sejam pagas aos promotores de jogo Artigo 27(1) [Administrative Regulation No. 27/2009, Amending Administrative Regulation no. 6/2002 in relation to the payment of commissions and other remuneration to gaming promoters art. 27(1)] (2009), *available at* <http://bo.io.gov.mo/bo/i/2009/32/regadm27.asp> [hereinafter Administrative Regulation 27/2009]; Dispatch of the Secretary for Economy and Finance No. 83/2009, *supra* note 30.

⁴⁵ Kate O'Keefe, *Macau Government Limits Casino Expansion*, WALL ST. J. (Mar. 26, 2010), <http://online.wsj.com/news/articles/SB10001424052748704094104575143332697415448>.

⁴⁶ Vinicy Chan and Rachel Butt, *Macau Casino Revenue Jumps to Record After Lunar New Year*, BLOOMBERG (Mar. 3, 2014), <http://www.bloomberg.com/news/2014-03-03/macau-feb-casino-revenue-jumps-tk-percent-to-tk-billion.html>.

since the late 1970s, but they were never formally regulated prior to 2002. Immediately after the 2001/2002 tender process, the Macau Government moved to license and regulate them so as to have transparency and clarity in this important segment of the gaming market.⁴⁷ For this purpose, a new law was published on April 1, 2002, setting out a totally new regulatory framework.⁴⁸ While it is not possible to discuss it in detail here, it should be stressed that under the system approved, the licensing of gaming promoters is carried out by means of administrative permissions (or licenses), which need to be renewed every year. Therefore, it is not done by means of concessions and concession contracts. On the other hand, the licensing process is ongoing, which means that any interested persons or companies can apply at any point in time; there are no predefined application periods.

Gaming promoters are important for a variety of reasons. Promoters recruit new customers, especially in Mainland China and elsewhere. Other essential reasons are that gaming promoters are allowed to issue credit to patrons and assume the corresponding risk of default and promoters arrange for funds for gambling to be available in the casino in a context where there is no free movement of capital from Mainland China.

Each gaming promoter must register with at least one concessionaire with which they wish to conduct business in the upcoming year.⁴⁹ It should be noted that the market is designed to be competitive and gaming promoters are free to work with more than one concessionaire if they wish to; the law enables them to move from one concessionaire to another, bringing with them their portfolio of customers.

There are various gaming promoters that have become very large companies and are listed in stock markets: Iao Kun Group Holding Company Ltd., listed in the NASDAQ (stock code: IKGH); Dore Holdings Limited, listed in Hong Kong (0628); and Neptune Group Ltd, listed in Hong Kong (0070).⁵⁰

The so-called 'VIP rooms' are gaming areas normally operated in association with gaming promoters who bring their customers to play there, and not in the mass market part of the casino. For this purpose, VIP rooms will have separate accounting and may have separate gaming chips. The VIP rooms are not a separate casino but they are legally distinguished for tax and statistics purposes: the taxation of VIP tables is higher.⁵¹ There may be service agreements in place between the sub/concessionaires and the gaming promoters for the purpose of allocating and occupying a specific space or room in a casino.

⁴⁷ Law 16/2001, *supra* note 7. (Art. 23 already included one provision on gaming promoters).

⁴⁸ Administrative Regulation 6/2002, *supra* note 24, as amended by Administrative Regulation 27/2009, *supra* note 44.

⁴⁹ Administrative Regulation 6/2002, *supra* note 24, art. 14(3).

⁵⁰ It is not known if the mentioned promoters are the largest or best promoters, but they have a high degree of visibility and information on them is more easily accessible. For the latest annual list of authorized promoters, see 4 *Boletim Oficial da Região Administrativa Especial de Macau* [Official Bulletin of the Special Administrative Region of Macau], at 1131 (January 2014) [hereinafter *Boletim Oficial*].

⁵¹ For details, see Luís Pessanha, *Gaming Taxation in Macau*, in 12 *GAMING L. REV. & ECON.* No. 4, 344 (2008).

In abstract, a gaming promoter may be paid on different bases: a percentage of ‘front money’ (the funds brought by the patron to the casino and deposited at the cashier); a commission on dead chips; a commission on live chips; a commission on the losses; or a percentage of the net rolling amount bet.⁵² The law of Macau is liberal in the sense that it does not regulate the exact method of payment that should be adopted and leaves that to the market.

In the past decade the commissions paid steadily increased, eventually the Government intervened and halted the escalation of commission rates. A law passed in 2009 states that the Secretary for Economy and Finance, who oversees the gaming sector, may set limits on the commissions payable and regulates their method of payment.⁵³ Payment is defined as including funds and any bonuses, free goods, services, or any other forms of remuneration. The limit was set at 1.25% of net rolling, regardless of the exact basis of calculation adopted.⁵⁴

Gaming promoters can come from anywhere: Macau, Hong Kong, China, Taiwan, Japan, Korea, Singapore, Malaysia, Thailand, etc. Foreign companies can also register as gaming promoters in Macau. A look at the list of approved gaming promoters reveals a number of foreign names.

Casinos can also work directly with customers, taking the credit risk involved. The decision will likely depend on where the gambler lives. If the gambler lives in Hong Kong, the gambler does not pose a legal risk because

⁵² According to documentation issued by one gaming promoter listed in the NASDAQ, “In Macau, two remuneration methods are used to compensate VIP room gaming promoters. On a fixed commission basis, VIP room gaming promoter revenues are based on an agreed percentage of Rolling Chip Turnover. On a win/loss split basis, the VIP room gaming promoter receives an agreed percentage of the “win” in the VIP gaming room (plus certain incentive allowances), and is required to also bear the same percentage of losses that might be incurred. Compared to the fixed commission basis, the win/loss split basis subjects the VIP room gaming promoter to the risk of losses from the gaming patron’s activity and greater volatility. (. . .) Rolling Chip Turnover is used by casinos to measure the volume of VIP business transacted and represents the aggregate amount of bets players make. Bets are wagered with “non-negotiable chips” [dead chips] and winning bets are paid out by casinos in so-called “cash” chips [live chips]. “Non-negotiable chips” are specifically designed for VIP players to allow casinos to calculate the commission payable to VIP room gaming promoters. Commissions are paid based on the total amount of “non-negotiable chips” purchased by each player. VIP room gaming promoters therefore require the players to “roll,” from time to time, their “cash chips” into “non-negotiable” chips for further betting so that they may receive their commissions (hence the term “Rolling Chip Turnover”). Through the promoters, “non-negotiable chips” can be converted back into cash at any time. Betting using rolling chips, as opposed to using cash chips, is also used by the DICJ to distinguish between VIP table revenue and mass market table revenue”. See Press Release, Asia Entertainment & Resources Ltd, Asia Entertainment & Resources Ltd. Announces Rolling Chip Turnover of US \$1.66 Billion for May 2013, June 4, 2013, available at <http://ir.ikghcl.com/releasedetail.cfm?ReleaseID=768932>. This company subsequently changed its name to Iao Kun Group Holding Co. Ltd.

⁵³ Administrative Regulation 27/2009, *supra* note 44, which amended Administrative Regulation 6/2002, *supra* note 24.

⁵⁴ See *Dispatch of the Secretary for Economy and Finance no. ° 83/2009*, *supra* note 30; see also William Eadington and Wang Wuyi, *The VIP-Room Contractual System and Macao’s Traditional Casino Industry*, 6 CHINA: AN INTERNATIONAL JOURNAL, No. 2, 237 (2008). An older study still worth reading is Angela Leong, *The “Bate-Ficha” Business and Triads in Macau Casinos*, 2 QUEENSLAND U. TECH. L. & JUST. J., 83 2002.

credit for gaming is enforceable in the courts of Hong Kong.⁵⁵ If the gambler lives in Mainland China, the fact that credit for gaming and gambling debts cannot be collected through the courts there suggests that the use of gaming promoters may be advisable even if it is less profitable in the short term, but casinos may wish to not have intermediaries and source patrons directly.⁵⁶ In the long term, patrons who have already made a few trips to Macau and established a good credit record may prefer at some point to deal directly with the casino and not with the gaming promoters.

Given the existence of an annual regulatory cycle, the number of licensed gaming promoters changes every year: it increased steadily from 2005, the first year for which there is data, and then declined in 2008.⁵⁷ This was possibly related with unforgiving competition in the sector (especially after the emergence of so-called 'super-junkets' such as A-Max Holdings), consolidation, as well as the impact of the financial crisis. The number increased again after that and stood at 218 on December 31, 2013.⁵⁸ Such high number of gaming promoters licensed to operate in Macau, which can work with a large number of employees, may pose regulatory challenges given that the field is made of hundreds or thousands of persons and entities.

Attracting high rollers is a key marketing issue, the business is highly competitive. Each marketing department will have a specific view on how best to approach the matter; generally, it can be said that at the top-end, the casinos may provide executive suites, hosts, transportation in private jets owned by the company, food and beverage, and other complimentary services ('comps' in casino jargon). It should be mentioned that this segment of the market is also more risky for the casino, especially due to increased volatility and lower margins.⁵⁹

VII. INTEGRITY AND REPUTATION REQUIREMENTS

By law, suitability requirements must be complied with in order to obtain and keep a concession and a promoter license in force.⁶⁰ The need for suitability means an appropriate standard of professional integrity, reputation, character, and experience. This requirement is clearly stated in the laws that regulate both casino sub/concessionaires and gaming promoters,⁶¹ and the Gaming Inspection and Coordination Bureau⁶² (DICJ) must conduct a number of checks

⁵⁵ In detail, Godinho, *supra* note 28.

⁵⁶ Vinicy Chan, *Million-Dollar Gamblers Spark Latest Macau Turf Fight*, BLOOMBERG, (Feb. 24, 2014) <http://www.bloomberg.com/news/2014-02-23/sands-mgm-court-high-stakes-gamblers-to-cut-junket-ties.html>.

⁵⁷ This evolution can be followed by counting the number of gaming promoters included in the annual list published by DICJ.

⁵⁸ See *Boletim Oficial*, *supra* note 50.

⁵⁹ See Robert C. Hannum and Sudhir H. Kale, *The Mathematics and Marketing of Dead Chip Programmes: Finding and Keeping the Edge*, 4 INT'L GAMBLING STUD., 33 (2004).

⁶⁰ Law 16/2001, *supra* note 7, art. 14.

⁶¹ *Id.* at art. 14 & art. 23(4); Administrative Regulation 6/2002, *supra* note 24.

⁶² In Portuguese, the name is "Direcção de Inspeção e Coordenação de Jogos," hence the abbreviation DICJ; see www.dicj.gov.mo.

and enquiries so as to determine whether it is met.⁶³ Regular background checks may also take place after a concession or license has been granted.⁶⁴ Information from other jurisdictions may be requested and taken into account. The extent to which there is information exchange between DICJ and the regulators of other jurisdictions is not known to the public.

In relation to gaming promoters, the law attempts to make the control of suitability more manageable by requiring that all shareholders be individuals and, in the case of public companies, that all shares be nominative.⁶⁵ However, the possibility of straw men shareholders remains.

The control of suitability is a relatively complex area and the standard itself is somewhat vague. It is an administrative law concept and therefore criminal law guarantees and standards of evidence do not apply. This means that for someone to be found unsuitable it is not necessary for the Government to have evidence beyond a reasonable doubt. It is also an area constantly in the media spotlight, as investigative journalists regularly make headlines alluding to possible underworld links and activities.⁶⁶ Be that as it may, it should not be forgotten that there may be commercial interests at play in these allegations, as various companies specialize in due diligence and background checks, a profitable line of business. The worse the reputation, the higher will be the perception of the need for expensive checks and investigations.

VIII. THE PREVENTION OF MONEY LAUNDERING

In 2006 the Macau Legislative Assembly, the Chief Executive, and various regulators and professions, including the DICJ, passed new laws and regulations for the prevention and repression of money laundering and the financing of terrorism.⁶⁷

In general, it can be said that today Macau follows very closely the international standards issued by the Financial Action Task Force (FATF), as implemented in the European Union. The Macau Special Administrative Region is a member of the Asia/Pacific Group on Money Laundering (APGML), which conducts mutual evaluation exercises regularly.⁶⁸

The prevention and detection mechanisms for the gaming industry are inspired by the latest European Union directives. The Macau SAR ratified the 1988 UN Vienna convention against drug trafficking, the 1999 UN convention

⁶³ Administrative Regulation 6/2002, *supra* note 24, art. 6.

⁶⁴ Law 16/2001, *supra* note 7, art. 33.

⁶⁵ Administrative Regulation 6/2002, *supra* note 24, art. 4(2).

⁶⁶ See Matt Isaacs, *The Macau Connection*, REUTERS, Mar. 11, 2011, available at <http://www.reuters.com/article/politicsNews/idUSN0942219020071009>.

⁶⁷ See *Financial Strategies*, *supra* note 32, at 267-268; see also Jorge Godinho, *The Prevention of Money Laundering in Macau Casinos*, 17 GAMING L. REV. & ECON. 262, 267-268 (2013).

⁶⁸ See, *Members and Observers*, ASIA/PACIFIC GROUP ON MONEY LAUNDERING (APG), <http://www.apgml.org/members-and-observers/members/default.aspx>. (last visited Mar. 27, 2014); see also *About Us*, ASIA/PACIFIC GROUP ON MONEY LAUNDERING (APG), <http://www.apgml.org/about-us/page.aspx?p=91ce25ec-db8a-424c-9018-8bd1f6869162> (last visited on Mar. 27, 2014).

against the financing of terrorism, the 2000 UN Palermo convention on transnational organized crime, and the 2003 UN convention against corruption.⁶⁹

In late 2006, the DICJ issued an instruction for the entire gaming sector which includes the following various basic components:⁷⁰

- *'Know your customer' or customer due diligence.* Identification of patrons is required in the case of suspicious transactions and also in relation to all transactions above a specified amount, which currently stands at MOP/HKD 500.000 (around USD 62.500).
- *Record-keeping* of relevant documents is required for a period of at least five years, in order to make it possible to later retrace the details of the transactions and the associated flow of funds.
- *Transactions reporting* covers the following types of operations: placing bets and paying winnings; purchase and sale of chips, tickets, and tokens; granting and collecting credit for gaming.
- *Suspicious transactions* must be reported to the Macau financial intelligence unit (GIF),⁷¹ irrespective of the amount. This requirement arises from general law and is no different from any other sector of financial activity.
- In addition, *all transactions above HKD/MOP 500.000* must be reported to DICJ. This rule is specific to the gaming sector and is not based on the EU directives regarding anti-money laundering. There is no systematic threshold reporting in banking, insurance, or any other sectors. This means that the gaming sector follows a stricter requirement, which causes a very large number of reports.
- The existence of specific *internal procedures and control mechanisms* as well as *staff training* are also required by current law.
- A *compliance officer* should be appointed by every entity subject to the supervision of DICJ. The person appointed must have appropriate experience and functional autonomy. DICJ may veto the name or request the replacement of the compliance officer if reasons related to suitability or technical capacity so require. The compliance officer is a company official who is especially tasked on a daily basis with reviewing, evaluating, and submitting suspicious transaction reports to GIF.
- There is a prohibition of *tipping-off*: it is unlawful to inform a patron that a report has been or will be filed so as not to compromise the operation of the regulatory system.
- *Cooperation* with the authorities is required, in accordance with the law.

The Macau financial intelligence unit (GIF) was created in the summer of 2006.⁷² Prior to its creation, the reports on suspicious transactions, which have been required since 1998, were sent to the Judiciary Police.⁷³

⁶⁹ See *Financial Strategies*, *supra* note 32.

⁷⁰ See *The Prevention of Money Laundering in Macau Casinos*, *supra* note 67, at 269-72.

⁷¹ *Id.*

⁷² THE FINANCIAL INTELLIGENCE OFFICE, MACAU SAR, http://www.gif.gov.mo/web1/index_en.html (last visited Mar. 27, 2014).

⁷³ Decreto-Lei n.º 24/98/M Estabelece a obrigatoriedade de comunicação de operações suspeitas de poderem integrar os crimes previstos no artigo 10.º da Lei n.º 6/97/M, de 30 de Julho. [Decree Law No. 24/98/M Establishes the obligation to report transactions suspicious

However, it should be noted that the reports on all gaming transactions above HKD/MOP 500,000 are sent to the gaming regulator, DICJ, and not to the GIF.⁷⁴ DICJ releases information on the matter sporadically: there were 555,872 such transactions in 2011, a significant increase from the 293,931 transactions in 2010.⁷⁵ This translates to roughly one transaction every minute.

The statistics released by GIF on suspicious transactions show that the leading source of reports in Macau is indeed the gaming sector, even surpassing the financial sector. Suspicious transactions received by the GIF since 2007, its first full year of operation, were as follows:

	2007	2008	2009	2010	2011	2012
Banks and insurance	343	386	382	338	477	510
Gaming sector	374	443	767	814	1082	1328
Other sectors	8	9	7	68	4	2
Total	725	838	1156	1220	1536	1840

Table 3: Number of STR's received by the GIF 2007-2012 (source: Financial Intelligence Office, Annual Report 2011, Macau, 2012, p. 45)

As cases are investigated, it often emerges that various transactions are linked. The number of cases that were sent to the Public Prosecutions Office for further investigation and possible prosecution were as follows:

2007	2008	2009	2010	2011	2012
64	104	100	101	190	166

Table 4: Number of cases sent by GIF to the Public Prosecutions Office⁷⁶

This data shows that the gaming industry generates the largest quantity of suspicious transactions. Moreover, the volume has been increasing rapidly. There appears to be a linear correlation between the number of suspicious transactions and the gross gaming revenue, as both roughly quadrupled between 2007 and 2012, as seen on the above tables.

The 2006 law applies to gaming sub/concessionaires of casino games of chance as well as to gaming promoters.⁷⁷ All these entities must comply with the legal obligation to report suspicious transactions. Therefore, gaming promoters (junket operators) must comply with general rules on anti-money laun-

of being the offense set forth in article 10 of Law 6/97/M, of July 30] (1998), available at <http://bo.io.gov.mo/bo/i/98/22/declei24.asp>.

⁷⁴ Instruction 2/2006 on Preventative Measures against Crimes of Money Laundering and Terrorist Financing art. 6.4 at 6 (promulgated by the Gaming Inspection and Coordination Bureau, Nov. 13, 2006) [hereinafter Instruction 2/2006], available at www.gif.gov.mo/web1/doc/DICJ/InstructiononGaming.doc.

⁷⁵ Tiago Azevedo, *More Dubious Currency Deals Heading to Prosecutors*, MACAU BUSINESS DAILY, May 2, 2012, at 3.

⁷⁶ *Id.* (quoting a DICJ official speaking at a conference organized by the University of Macau).

⁷⁷ See Instruction 2/2006, *supra* note 74, art. 2 at 3.

dering as described above. This is of particular importance, since some of the VIP rooms are run by gaming promoters and the promoters are allowed to grant credit for gaming. Gaming promoters usually know the background of their customers reasonably well and may be able to assess if a certain transaction is suspicious and should be reported. The main concern regarding money laundering has to do with the existence of a significant number of authorized gaming promoters which play a role in channeling money and high rollers from Mainland China.

IX. REGULATORY GAPS AND SHORTCOMINGS

There are various visible gaps or shortcomings in the current regulatory system. The first relates to politically exposed persons (PEPs). The DICJ instruction defines a PEP as follows: “a person, a family member or an associate of such person who performs or has performed the functions of prominent political positions in a foreign country or territory, including prime minister, government leader, chief executive, judicial or military officials, managers of state enterprises or representatives of political parties”.⁷⁸ Therefore, PEPs are currently defined as *foreign* PEPs. This definition is indeed in line with international standards, and the FATF recommendations. The DICJ regulation requires enhanced due diligence in the case of PEPs.⁷⁹

However, in the case of Macau, it can be argued that domestic PEPs (from Macau, Mainland China, and Hong Kong) are of higher interest. This was highlighted in the banking sector by the Ao Man Long case in which a former Secretary of Government of the Macau SAR was arrested in 2006 and subsequently convicted of corruption and other crimes including money laundering and sentenced to a prison term of twenty-eight and a half years.⁸⁰ In addition, many cases of corrupt public officials from Mainland China gambling in Macau with diverted funds have been documented.⁸¹

The second shortcoming relates to the statistics released by GIF to the public, which are not too detailed. In particular, there is no separation between the various components of the gaming sector. This, in turn, makes it difficult to derive meaning from the statistics. Namely, it is impossible to determine which market segments are generating reports and which ones are not, as well as futile to attempt to relate market share with the number of suspicious transaction reports generated by each sub/concessionaire. Having detailed information would be helpful to assess how the various local operators are implementing and complying with the obligation to report suspicious transactions. Currently, it is not possible to determine how many reports were filed by gaming promoters.

The third issue relates to the lack of public information on enforcement actions adopted by DICJ. While DICJ is known to take appropriate actions

⁷⁸ *Id.* at 2 (definition of concepts used).

⁷⁹ *Id.* art. 5.7 at 5.

⁸⁰ Jorge Godinho, *Macau: The Ao Man Long Corruption and Money Laundering Case*, FREEDOM FROM FEAR, July 2009, at 26, available at www.freedomfromfearmagazine.org.

⁸¹ See Zhonglu Zeng & David Forrest, *High Rollers from Mainland China: A Profile Based on 99 Cases*, 13(1) UNLV GAMING RES. & REV. J. 29, 34 (2009).

where required, DICJ does not make its findings and enforcement measures available to the public. Namely, there is no public data on penalties applied or licenses cancelled. This information would be helpful to assess the overall compliance of the industry with anti-money laundering regulations and the level of impact of the enforcement of the suitability requirements.

A final matter relates to the absence of a legal régime to deal with cases where a gaming concessionaire breaches or fails to comply with relevant provisions of applicable laws, regulations, or of the concession contract. While some offences and penalties are mentioned directly in the concession contracts and in some laws, and major breaches may cause the rescission of the concession, for all other issues further regulation is needed and expected. This is long overdue. The current situation is one where the Government does not have the means to punish minor offences.

X. UNDERAGE GAMBLING AND EXCLUSIONS

A. *Underage persons*

Underage persons for the purpose of casino gambling are defined, under a law passed in 2012, as persons who have not yet reached twenty-one years of age; therefore, they are prohibited from entering and gambling in casinos.⁸² Prior to 2012, the limit was eighteen years old.⁸³ The casino sub/concessionaires are under a legal duty to enforce this rule. The matter has generated some legal debate in Macau as to whether it is constitutionally permissible to elevate the minimum age for a specific purpose such as gaming, while at the same time keeping the age of majority unchanged at eighteen.⁸⁴

Given that there are a very large number of patrons visiting the casinos on a daily basis, it may be difficult to completely avoid breaches of this rule. In addition, Macau casinos are not required to check the identification of every single person entering, unlike casinos in some other jurisdictions, such as Singapore. Such checks are seen as not feasible given the sheer number of persons that visit the properties every day. The law states that casinos may be fined if there is at least negligence on their part.⁸⁵

The legal evolution of this topic has been marked by a well-known case that occurred in early 2007 in which a sixteen year old girl from Hong Kong gambled and won a very large jackpot in the Sands casino.⁸⁶ After some de-

⁸² Law No. 10/2012, *supra* note 34.

⁸³ Law No. 16/2001, *supra* note 7.

⁸⁴ See Jorge Godinho, *As proibições de entrada nos casinos* [The prohibitions of Entry Into Casinos], 2 LEGISIURIS DE MACAU EM REVISTA __ (2013).

⁸⁵ Law No. 10/2012, *supra* note 34, art. 13(2)(1).

⁸⁶ Fox Yi Hu, *Winnings Paid to Mother of Under-Age Gambler*, SOUTH CHINA MORNING POST (Feb. 25, 2007), <http://www.scmp.com/article/582819/winnings-paid-mother-under-age-gambler>; Norma Connolly, *Hand Over Teenager's Jackpot to Mother, Casino Told*, SOUTH CHINA MORNING POST (Feb. 24, 2007), <http://www.scmp.com/article/582715/hand-over-teenagers-jackpot-mother-casino-told>; Fox Yi Hu, *Casino to be Rebuked After Teen Hits Jackpot*, SOUTH CHINA MORNING POST (Feb. 23, 2007), <http://www.scmp.com/article/582609/casino-be-rebuked-after-teen-hits-jackpot>; Dan Bell, *Macau Casino Pays out to Girl, 16*, THE GUARDIAN (Feb. 25, 2007), <http://www.theguardian.com/world/2007/feb/26/china.macao>.

bate, the DICJ took the view that the jackpot should be paid, although the justification for this opinion was not made public. That was, in this author's opinion and with due respect, an unfortunate decision, which was not based on a correct reading of the law.⁸⁷ Enforcement of the prohibition to enter the gaming venues by underage persons has been considerably strengthened in the wake of this case and identity cards of those appearing to be underage are now regularly required by the casinos' security staff. To help dissuade underage gambling, fines can be levied on all underage persons trying to enter casinos.⁸⁸ In addition, the law now clearly states that neither the underage person nor the casino are entitled to the money gambled, instead all amounts bet and winnings shall go directly to the Government.⁸⁹

B. Exclusions

The same 2012 law also regulates the casino exclusionary process. A person can either asked to be barred entry from casinos or may confirm a request made by a family member.⁹⁰ The exclusion can last for two years, after which point, the exclusion lapses automatically.⁹¹

If a person wins money while the exclusion is in force, such moneys shall not be paid and shall revert to the Government.⁹² The excluded person may also be prosecuted for the crime of disobedience,⁹³ a consequence that seems unduly severe.

At any time, the excluded person may ask for the cancellation of the exclusion, but such request shall only take effect thirty days after the day in which it was filed.⁹⁴ It is noteworthy to point out, if a person was excluded for a gambling addiction, there is no requirement to show evidence, such as a statement by a medical practitioner, affirming that any gambling addiction from which the person had been suffering is now controlled.

XI. REGULATION, SUPERVISION, AND ENFORCEMENT

A. DICJ

All criminal law matters arising from the gaming sector are handled by the Judiciary Police. All regulatory and enforcement matters arising from the gaming sector are the domain of the DICJ, an internationally respected agency.

The DICJ is a standard government department. As such, it is part of the local government, not an independent regulatory agency. DICJ executes public policy on gaming and there is no evidence of regulatory capture by the industry. However, there is a lack of public information regarding enforcement

⁸⁷ See Jorge Godinho, *Menores em casinos: é necessário alterar a lei?* [Minors in Casinos: Is it Necessary to Change the Law?], 4 REVISTA DE DIREITO PÚBLICO 127, 128 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1347245.

⁸⁸ Law No. 10/2012, *supra* note 34, art. 13.

⁸⁹ *Id.* at art. 11.

⁹⁰ *Id.* at art. 6(3).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* (referencing art. 312(1) of the 1995 Macau Penal Code).

⁹⁴ *Id.* at art. 6(2).

actions, penalties applied, licenses revoked, and instructions issued. There is also the lack of publication of an annual report of its activity, which is not usually required of standard Government departments, but would be quite helpful.

The DICJ inspectors are on the casino floor, twenty-four hours a day. One of the duties of DICJ staff is to track the money played per table for tax purposes. The number of DICJ inspectors has been increasing steadily in the last years to keep up with the expansion of gaming venues operating in Macau. In addition to the DICJ, the gaming operators are to self-regulate and are required to have internal review and control mechanisms.

B. GIF

GIF is a government office created in 2006 which is chiefly tasked with combating money laundering and the financing of terrorism. Just like DICJ, GIF is part of the local government. GIF is staffed mainly by former banking regulators and law enforcement personnel, and GIF publishes a relatively detailed annual report, available in three languages on its website.⁹⁵

GIF is perceived to be dynamic and is developing international cooperation with a number of entities and agencies via the signature of memorandums of understanding with other jurisdictions.⁹⁶ It participates actively in the APGML and is a member of the Egmont Group of financial intelligence units. Like in many other jurisdictions, the large number of suspicious transactions reports submitted is challenging to manage and assess for merit.

Overall, the Macau SAR is perceived internationally as being seriously committed to anti-money laundering efforts, having ratified and implemented the relevant legal instruments and devoted sufficient resources and staff.

XII. FINAL OBSERVATIONS ABOUT MACAU

A. Overview

Macau has made considerable progress in gaming regulation and supervision since 2001. Applicable international standards, where available, are being followed. As a result, Macau is considered to be a credible and safe gaming jurisdiction by the financial markets and therefore has attracted the attention of all major international gaming operators. Massive investments have taken place in recent years. The financial crisis has impacted the progress of some projects, but it subsided and a rapid rate of investment continued. The awarding of new land for future casino gaming projects in 2012 and 2013 has paved the way for the next wave of openings of integrated resorts, expected from 2015 onwards.

Indeed, there are a very significant number of new projects in the pipeline. These include the Wynn Palace, the MGM Cotai, Galaxy's phase II, the Parisian (by the Venetian, to be built in lot 3), SJM Cotai, Macau Studio City, and

⁹⁵ See FINANCIAL INTELLIGENCE OFFICE, MACAU SAR, www.gif.gov.mo (last visited March 29, 2014).

⁹⁶ See *id.* (stating MOUs have been signed with mainland China, Hong Kong, South Korea, Indonesia, Philippines, Thailand, Japan, Malaysia, Singapore and Fiji).

the Louis XIII. When all these projects are completed, the Cotai Strip will be a heavily built up and possibly congested area.

B. Outstanding Issues

A number of issues other than those already stated can be mentioned. In general, the progress in regulation has been slow since 2004, but this is not specific to gaming and is rather indicative of a broader pattern of Macau's governance where decisions are often not made immediately. Still, 2012 saw the passing of new laws regarding access to casinos, a new regulatory framework for slot gaming machines, and some measures have been made towards the adoption of a partial smoking ban in casinos.

Other problems needing attention are profit-sharing agreements by which parties that have not been subject to suitability investigations may be able to gain access to the market. It is clear that there are a number of casinos that are being operated as a joint venture between one of the sub/concession holders and one other party, such as the owner of a hotel.⁹⁷ It is also clear that the Government has in the past authorized these types of agreements, although this practice was stopped in 2008.⁹⁸ The main problem with these agreements is that the party who owns the hotel is not subject to a suitability investigation nor is the party selected by a public tender. This is a major regulatory problem that still needs to be addressed.

Side-betting or the 'multiplier,' that is, agreements between a third party and a patron whereby the amount formally credited is only a fraction of the real amount, which remains concealed, poses a considerable challenge. In side-betting, the real value of each bet is multiplied; the nominal value is not the real value.⁹⁹ This creates a parallel betting scheme that is not taxed, but goes through official casinos and follows the rules of the games. In side-betting, both the casino taking bets and the junket are authorized. In this way, the casino is unwittingly used by the junket for a parallel, untaxed betting scheme. This generates a direct erosion of the tax revenue. From a contract law point of view, side-betting is a sham transaction or relative simulation, so that a fraction of the transactions goes untaxed, but not all. It is difficult to avoid side-betting from taking place altogether, but efforts must be taken to mitigate these practices. Casinos are also interested parties in avoiding side-betting since it erodes the revenue of the industry.

A perennial concern relates to the tax rates, which are widely perceived as being quite high.¹⁰⁰ There have been frequent requests for the tax rate to be

⁹⁷ Octo Chang, *Revenue Sharing Revealed*, INSIDE ASIAN GAMING, Mar. 2007, at 26.

⁹⁸ Tom Mitchell and Robin Kwong, *Macau to Limit Casino Growth*, FINANCIAL TIMES (Apr. 23, 2008, 11:01 AM), <http://www.ft.com/cms/s/0/a4983f58-1091-11dd-b8d6-0000779fd2ac.html#axzz2x8qxeaJS>; Dominic Whiting and James Pomfret, *Macau Acts to Restrict Casino Growth*, REUTERS, Apr. 24, 2008.

⁹⁹ Octo Chang and Ben Lee, *The Multiplier*, INSIDE ASIAN GAMING, Apr. 2007, at 20,22 (emphasizing that one of the implications is that Macau gaming revenue is likely to be substantially higher than official figures suggest); see also Octo Chang, *House of Cards*, INSIDE ASIAN GAMING, Nov. 2007, at 12.

¹⁰⁰ Luís Pessanha, *Gaming Taxation in Macau*, 12 GAMING L. REV. & ECON. 344, 345 (2008).

lowered. However, the Government has made it clear that it has no intention whatsoever to change it.

In 2020 and 2022 the current concessions and sub-concessions shall expire. This is obviously a major issue, as the entire future of the legal basis of the industry is not clear. The Macau Chief Executive Chui Sai On, who took office on December 20, 2009, and is very likely to be reappointed in December 2014 for a second term, has the chance to review and revisit the main policy options that are currently in place.

XIII. MACAU'S POTENTIAL COMPETITION

There is an ongoing expansion of casino gaming in East and Southeast Asia, and it will likely continue at a rapid pace in the coming years. This section tries to provide a very short overview of the regional developments that have taken place and are expected in the coming years.¹⁰¹

Macau effectively played a trigger role in this expansion of casino gaming. The start of the new era can be safely identified as having taken place in 2004. In May of that year, the Sands Macau casino opened its doors. It is a beautiful building, designed by architect Paul Steelman, and was the first casino not operated by SJM. It showed the enormous potential of the 'mass market' to anyone who could still have doubts, especially to financiers.

It can be argued that 2004 was the year in which global financial markets embraced gaming companies. Many analysts started following gaming stocks and the industry became closely associated with investments. The casinos were staffed by MBA-holding casino executives that were tasked with creating new jobs, increasing tourism visitation, in addition to meeting a range of other measurements, metrics, and benchmarks. Macau was regularly reported in business news outlets such as Bloomberg. 2004 ushered in the financial culture in full force.

Various jurisdictions took note of the potential of gaming and of how the industry was developed, regulated, and managed in a modern and efficient setting in Asia, just like any other respectable and profitable business. Among such jurisdictions, Singapore was the most important, and quickly took decisive action. Other jurisdictions have followed Macau's lead, and are interested in developing similar magnets for tourism, conventions, and entertainment, while reaping the corresponding revenues for public budgets.

However, in analyzing the regional developments there should not be hasty generalizations, as the gaming industry continues to be a very domestic affair in each specific jurisdiction, and the public policy priorities and concerns surrounding casino legalization are not always the same. Each jurisdiction does it in different ways. Therefore, each case should be considered separately.

¹⁰¹ It is not the purpose of this section to fully document the expansion of gaming in the region. That could be topic of a specialized paper or book. In the context of this discussion the purpose is simply to illustrate how Macau is having and will continue to have much more competition, by showing in some detail where such competition now comes from, and where it may expand to in the future.

A. Singapore

The possible legalization of gaming in Singapore was initially alluded to in 2004, and after various stages of debate and consultation, the Casino Control Act was passed in 2006.¹⁰² Two operators were then selected, in what was a very competitive process. Resorts World Sentosa (of Genting Berhad, Malaysia) and the Marina Bay Sands (of Las Vegas Sands, USA) were each granted a license.

The Marina Bay Sands is located across from the financial district and the city center, has very large convention facilities, and is oriented towards business tourism, exhibitions, and shopping. On the other hand, Resorts World Sentosa contains a theme park and is oriented towards families with children. A common feature, imposed by law on both properties, is that the property's casino space cannot occupy more than 5% of the total area; this probably was a lesson learned from Macau, where there is no such limit and the natural tendency of the operators is to try to expand the gaming areas and shrink the others. Overall, Singapore developed casinos with very specific tourism, business and town planning goals in sight. As the revenue to be gained from the industry was not a priority, the tax levels are relatively low.

The Casino Regulatory Authority, created in 2008 to oversee the gaming industry, has been performing its mission with a very high degree of transparency.¹⁰³ Credit for gaming is authorized and legally enforceable. Gaming promoters can be licensed in Singapore, but there has been some caution in this regard due to concerns such as suitability and money laundering.

Measures are in place to discourage Singapore's citizens and permanent residents from gambling. Citizens and permanent residents are required to pay an entry fee of SGD 100 (around \$80) to gain access for a twenty-four hour period or of SGD 2000 (around \$1600) for a full year. Tourists do not have to pay to enter the casinos. There is a check of the documents of every single person going in and out of the casinos. When this measure was approved it was thought that it would be sufficient to prevent most Singaporeans from excessive gambling. However, that proved not to be the case and in fact quite many Singaporeans are willing to pay the entry fee and play. Other restrictive measures are now being considered to try to lower a somehow unexpected surge of gambling in Singapore.

B. Taiwan

In 2009, the *Offshore Islands Development Act* was passed, adopting a development model whereby casinos may be operated in offshore islands and not on the main island, Formosa. The law states that for casinos to open they need to be approved by a referendum of the local population. However, the first referendum that was held resulted in a failure in Penghu (Pescadores) islands in 2009, although another one may take place in the coming years. This means

¹⁰² See Derek da Cunha, *Singapore Places its Bets: Casinos, Foreign Talent and Remaking a City-State*, STRAITS TIMES PRESS (Sing.) 2010.

¹⁰³ See CASINO REGULATORY AUTH., ANNUAL REPORT 2011/12 (2012), available at <http://app.cra.gov.sg/public/www/content.aspx?sid=18>.

that Taiwan's first casino will probably open in Matsu islands, where a referendum was passed in 2012.

C. Japan

Japan has been debating the legalization of casinos for quite many years. The country in fact already has one of the largest segments of the gaming industry in the world, the ubiquitous *pachinko* parlors.

It seems likely that Japan will have casinos in the next few years. A bill was presented to the parliament in December 2013 and the general expectation is that once the law is passed the country may have two very large integrated resorts located in prime touristic areas of Tokyo and Osaka, much like Singapore. It is likely that there will be a number of relatively smaller casinos in other counties around the country, from Sapporo to Okinawa.

D. South Korea

Currently, there are seventeen casinos around the country including eight small casinos located in Jeju Island. The policy followed for the casino industry is very much tourism-oriented. As a result, Korean nationals are only allowed to play in the Kangwonland Casino, which is located in a relatively remote area that used to thrive on mining; the Kangwonland casino is quite profitable.¹⁰⁴

South Korea is now moving ahead with an expansion of gaming in the Incheon free economic zone, located right next to the country's main international airport. This may attract international visitors, and especially from China, given the close proximity to Shanghai and Beijing.

E. Philippines

Casino gaming is controlled by a State-owned entity, the Philippines Amusement and Gaming Corporation (PAGCOR), which performs the roles of both regulator and operator. PAGCOR operates casinos and licenses other operators.

The industry has been expanding rapidly. Resorts World Manila opened in 2009 and a new Entertainment City is taking shape in Manila, the first resort, Solaire, opened in 2013.

Other operators include First Cagayan, which is taking bets remotely from China by means of proxy betting.¹⁰⁵

F. Vietnam

Vietnam has five casinos, located in touristic areas including the border with China, which can only be visited by foreign tourists. Vietnam is developing a casino strip in Ho Tram, a beach town located 125 kilometers southeast of Ho Chi Minh, where the first hotel opened in 2013.

¹⁰⁴ See KANGWONLAND, <http://kangwonland.high1.com/eng/aboutKangwonland/html.high1> (last visited Mar. 27, 2014) (discussing Kangwonland Casino).

¹⁰⁵ Katrina L. Nepomuceno, *Philippines Proxy Betting*, 14 GAMING L. REV. & ECON. 673, 674 (2010).

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G. Cambodia

Gaming is operated by NagaCorp in Phnom Penh. NagaWorld is the only casino in the capital; a seventy year license was granted in 1995, including forty-one years of exclusivity over a radius of 200 kilometers.¹⁰⁶

There are also around thirty casinos in the borders with Thailand (which does not have legal casinos) and Vietnam (which does not allow nationals to gamble in the country).

H. Malaysia

Malaysia has had casino gaming since 1971 at the Genting Highlands (of Genting Berhad), a resort located at the top of a mountain fifty-eight kilometers from Kuala Lumpur, about 1,800 metres above sea level, and can be reached by road or by cable-car. Resorts World Genting is the only location for onshore casino gambling in the country, but there are also cruise boats offering casino gaming in international waters.

This situation is stable and not foreseen to change due to religious and practical reasons. Malaysia is a multicultural but majority Muslim country, and if sharia law was expanded this could spell the end of legalized gambling. After a general election in 2013 won by the pro-business Barisan National party, Genting announced plans for the renovation and expansion of the facilities at the Genting Highlands.

I. Russia

In 2009, Russia reformed casino gaming laws opting for a model in which casinos can only exist in four regional areas, located at the extreme geographical points of its vast territory. For the purposes of this discussion, it should be mentioned that one such area is located in Vladivostok,¹⁰⁷ very near the northern China provinces of Jilin and Heilongjiang and only a two and a half hour flight from Beijing.

XIV. FINAL OBSERVATIONS

From a regulatory perspective, it can be concluded that while gaming law in Macau has been progressing, its development has been slow and a very significant number of challenges still need to be addressed. First, the future of the fundamental legal basis, the concessions, is unclear. Second, there is an ongoing administrative tolerance of joint venture or partnership agreements that effectively enable new participants to enter the industry as casino operators without a public tender. Third, the regulation and control of gaming promoters and VIP rooms should be deepened. Fourth, there is a certain lack of transparency on the actual functioning of the regulatory system. Fifth, the control of money laundering, while generally satisfactory, has some room for improve-

¹⁰⁶ See NAGACORP, ANNUAL REPORT 2012 15 (stating that the company is listed in the Hong Kong stock exchange (3918)).

¹⁰⁷ *NagaCorp Follows Lawrence Ho in Pursuing the Development of an Integrated Resort in Russia's Far East*, INSIDE ASIAN GAMING (Sept. 16, 2013), <http://www.asgam.com/features/item/2124-the-next-frontier.html>.

ment. Overall, there is considerable room for further development of these specialized areas of the regulation, and a need for clarification of the broad strategy for the sector for the long term future.

As mentioned in this paper, the current situation in Macau should be articulated with the rapidly changing regional context, as there has been a considerable shift in the way casino gambling is perceived around Asia. The concept of very large integrated resorts with casino gambling is spreading in Asia, as gaming is now closely associated with tourism and integrated resorts, and therefore much more tolerated. It is a fact that Macau played a leading role in this paradigm shift, but this is now becoming a problem in the sense that the expansion of gaming may pose major challenges for Macau, which has no other significant source of revenue. The arrival point of this evolution cannot yet be fully predicted, but, in general, a sort of snowball effect could take place as no jurisdiction likes to see its citizens going abroad to spend their money, financing the revenue of others. When Japan legalizes and opens casinos and South Korea expands the offer in Incheon, this will likely generate visitation from northern China. As a result, there may be pressure to open gaming in Beijing and Shanghai; it is well known that China's southern island of Hainan would also like to have gaming. Whatever the exact details and evolution, the overall effect seems certain, and that is increased competition. It cannot be doubted that Macau will remain by far the largest gaming market, in a situation similar to that of Las Vegas, which now also has plenty of competitors but continues to be the gambling and entertainment capital of the US. But the limitations on land available, infrastructure, and transportation may mean that urban congestion will increase significantly and a peak capacity will be reached not many years from now.